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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. .....

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

Petitioners,

vs.

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, LOEW'S INCORPORATED, PARAMOUNT PICTURES, INC., WARNER BROTHERS PICTURES, INC., COLUMBIA PICTURES CORPORATION, SAMUEL GOLDWYN PRODUCTIONS, INC., REPUBLIC PRODUCTIONS, INC., HAL E. ROACH STUDIO, INC., TECHNICOLOR MOTION PICTURE CORPORATION, TWENTIETH CENTURY FOX FILM CORPORATION, R. K. O. RADIO PICTURES, INC., UNIVERSAL PICTURES COMPANY, INC., and ASSOCIATION OF MOTION PICTURE PRODUCERS, INC.,

Respondents.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable the Supreme Court of the United States:

The petition of Oscar Schatte, Raymond E. Conaway, Andrew M. Anderson, Charles L. Davis, Harry Beal, Arthur Djerf, Ewald K. Albrecht, Harry L. Talley, Harry Davidson, John L. Kierstead, Thomas W. Hill, Lloyd C. Jackson, Alfred J. Withers, John H. Zell and Edward

Derham, on behalf of themselves and all others similarly situated, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered on January 16, 1948. [R. 144.]

Opinion Below.

The opinion in the District Court is reported in 70 Fed. Supp. 1008 [R. 122; App. A]. The *per curiam* opinion of said Circuit Court of Appeals is not yet reported, but is found in the record [R. 143], as follows:

> "For the reason stated in its opinion (70 F. Supp. 1008), the judgment of the District Court is affirmed."

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on January 16, 1948 [R. 144]. The jurisdiction of this Court is invoked under Section 240 of the Judicial Court, as amended (28 U. S. C., Sec. 347).

Summary Statement of Case.

The general nature of this case is stated in the opening paragraphs of the District Court's opinion [R. 122; App. A] as follows:

> "This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated, to determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving

Picture Operators of the United States and Canada (hereinafter called Stagehands), and others. The defendant studios and Stagehands (IATSE) have moved to dismiss on the grounds that: (1) this court lacks jurisdiction; (2) the court should, in the proper exercise of its discretion, decline to assume jurisdiction; and (3) the complaint fails to state a claim upon which relief can be granted.

"The forty-eight page complaint when analyzed presents nothing more or less than a request that this court interpret a private contract or agreement allocating certain work on stage sets in the moving picture industry. * * * The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship.

"Thus, we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other. Since this is a court of limited jurisdiction, every case brought here must fall within the terms of a provision of some statute of the United States. Plaintiffs allege (paragraph VIII):

> 'Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Section 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United State Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV.'

> "If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the Court must dismiss the action for want of jurisdiction."

In concluding the opinion, the Court ordered that the case be "dismissed for want of jurisdiction." [R. 128.]

The Agreements.

The "certain agreements entered into between the motion picture studios, Carpenters, and International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands), and others," and the "private contract or agreement allocating certain work on stage sets in the moving picture industry," and the "contract negotiated on their behalf by a labor union," referred to in the above quotation from the District Court's opinion, included the following agreements and matters relating thereto:

(1) The employment of the Carpenters by the defendant Companies, to do the carpenters' work in connection with making of motion pictures, since the beginning of the industry in California, as alleged in paragraph XIII [R. 9].

(2) The agreement between the Carpenters' Union and the IATSE, negotiated in the Executive Council chamber of the A. F. of L. with Samuel Gompers presiding, on July 9, 1921, as alleged in paragraphs XV and XVI, and as shown in Exhibit "B" [R. 10-37-38; App. B]. This agreement defined the work of the Carpenters, as follows:

> "It is agreed by the International Alliance of Theatrical Stage Employees that all work done on lots or location and all work done in shops, either

bench or machine work, comes under the jurisdiction of the United Brotherhood of Carpenters and Joiners of America.

"It is agreed that:

"All carpenter work in and around Moving Picture Studios belongs to the carpenter. This includes:

"1. Any and all carpenter work in connection with the Moving Picture Studios, the construction of stages or platforms on which building or parts of buildings are to be erected.

"2. All carpenter work in connection with the erection of any building or part of building, from which a picture is to be taken.

"3. The operation of all wood-working machinery in the making of all furniture, fixtures, trim, etc., for use in Motion Picture Studios, belongs to the carpenter."

(3) An apparent agreement between the Carpenters and the IATSE, dated February 5, 1925, and the apparent ratification thereof by the General President of the Brotherhood of Carpenters, alleged in paragraphs XVII and XVIII [R. 11-12, 35-36]. These two paragraphs were alleged in error due to mistaken information. Leave will be asked to amend them, and any related allegations, so as to allege that this apparent agreement of February 5, 1925 was never approved by the General President, never became effective, and was never used or followed.

(4) The contract between the Motion Picture Companies and the Carpenters' Union, and various other crafts, beginning with the basic agreement of November 29, 1926, and continuing through periodic adjustments, supplements, amendments and extensions, to and including the present Exhibit "A" agreement of July 2, 1946, as alleged in paragraph XIV [R. 9, 28-34; App. C]:

This present agreement is:

1. A "contract for two years." [R. 32; App. C, 63];

2. A collectively bargained agreement in its provisions governing "wage scales, hours of employment and working conditions" [R. 33; App. C, 64]; and

3. An employment contract in its provisions for "all crafts going back to work on Wednesday a.m. July 3, 1946" [R. 34; App. C, 63], and the return to work of the Carpenters thereunder.

4. "An interim agreement," to serve, "pending the completion of contracts" [R. 28, 29; App. C, 59], that is, an agreement to negotiate under Section 7 of the National Labor Relations Act, as now amended [R. 28, 29].

The defendant IATSE was present when this agreement was made [R. 29; App. C, 59].

(5) The Cincinnati Agreement of October, 1945, between the defendants, the Companies, the IATSE, and the Carpenters Union, and other crafts, as embodied in the directive of the A. F. of L. Executive Council [R. 42-43; App. D], alleged in paragraph XIX [R. 12, 42], directing, in part, (1) directing that the Hollywood strike be terminated immediately, (2) that all employees return to work immediately, and (4) that a committee of three members of the Executive Council of the American Federation of Labor investigate and determine within thirty days all jurisdictional questions still involved.

(6) Compliance with said Cincinnati Agreement by the return of the Carpenters to their historic work, and the continued employment of the Carpenters in their said historic work, and the withdrawal of the IATSE therefrom, as alleged in paragraph XX [R. 13].

(7) The planned violation of said Cincinnati Agreement, by the IATSE, and its officers, particularly as to the Carpenters' work of "set construction," as alleged in paragraph XXIV [R. 16].

(8) The decision of the Three-Man Committee [App. D], dated December 26, 1945, alleged in paragraph XXIII [R. 14-16], to maintain the historic division of work between the Carpenters and the IATSE [R. 45; App. D, 69], as follows:

> "An analysis disclosed that three possible methods of solution could be utilized, *i. e.,*" * * *
>
> "(c) A division of work designations within the industry patterned after previous agreements, negotiated mutually by the various crafts.
>
> "After careful and thorough study the committee unanimously agreed that the latter plan is unquestionably the best method of approach. It is the committee's considered opinion that such procedure affords the only plausible solution to a most difficult and complex problem.
>
> "Accordingly, this decision is based on that premise * * *"

(9) The misinterpretation and violation of said December 26, 1945 award, by the defendant Companies (and by the IATSE), within the month thereafter, in wrongfully discharging Carpenters from carpenters' work, and replacing them with members and permittees of said IATSE as alleged in paragraph XXV [R. 17].

(10) The action of the Executive Council of the A. F. of L., because of said aggressions, instructing its Three Man Committee to clarify its said award of December 26, 1945, and the clarification issued by said Committee on August 16, 1946, to carry out the Committee's

original intention, as alleged in paragraph XXVII [R. 17], and shown by Exhibit "F" [R. 18, 57; App. E].

(11) The refusal of the Companies thereafter, and to the present time, to employ Carpenters in the work prescribed in said December 26, 1945, decision and award, and the discharge of approximately twelve hundred Carpenters from their employment, and the substitution of IATSE members and permittees for them in carpenters' work, as alleged in paragraph XXVI [R. 17]. A copy of an "Emergency Working Card" issued to permittees by said IATSE, is attached to plaintiffs' complaint, as Exhibit "E" [R. 56].

(12) The plaintiffs have always been ready, willing and able to perform the work tasks as aforesaid, in accordance with said contract, but the defendant Companies and IATSE, acting in concert, have refused to abide thereby, as alleged in paragraphs XXX and XXXI [R. 19].

The Conspiracy.

The second cause of action, after adopting the allegations of the first, alleges the conspiracy of defendant Companies and defendant IATSE in said contract violations, and in said encroachments upon the carpenters' work belonging to the carpenters under said contracts, award and clarification [R. 22-27]. The entire second cause of action of the complaint is set forth in appendix E.

This conspiracy, between respondents, IATSE and the Motion Picture Companies, interferes with "the continued and uninterrupted flow of interstate commerce in the motion picture industry under the good faith observance of

said contracts and arbitration determination," as alleged in paragraph XXXIV [R. 21].

The complaint alleges, in paragraph XXXII [R. 20], that the controversy arises from the acts and conduct of the defendant IATSE, and the accession thereto of the defendant Companies, as follows:

> "The controversy alleged herein arises from the acts and conduct of defendants I.A.T.S.E., Walsh, and Brewer in claiming, demanding, and enforcing, by coercion and other devices, including the threat to close every motion picture theatre on the continent by calling out on strike all moving picture projectionists belonging to said union, their claim to the right to provide members of I.A.T.S.E. and non-union 'permittees' of said union to do the work allocated to plaintiffs by the aforesaid Decision and Award and the clarification thereof, by historical custom and usage, and by the terms and provisions of agreements alleged hereinbefore, and the accession to said demands and the employment of members and 'permittees' of I.A.T.S.E. to do the work of plaintiffs by defendant Motion Picture Companies."

The defendant IATSE repudiated the clarification, that is, the December 26, 1945, decision, in its original intention, as shown by Exhibit "I." [R. 25; App. "G."]

The Controversy.

The controversy involves the construction and interpretation of the terms and provisions of these contracts, agreements, decisions, findings and awards, and the rights, privileges and immunities of plaintiffs thereunder, and under the Constitution and laws of the United States, as alleged in paragraph XXXIII [R. 20].

This controversy is actual and involves the public interest, as alleged in paragraph XXXIV. (21)

The declaratory relief sought is the only remedy available to plaintiffs to maintain:

(1) Their constitutional and legal right to work at their chosen vocations;

(2) Their constitutional and statutory right to work under said contracts, decisions, findings, and award;

(3) The continued and uninterrupted production of Motion Pictures in the studios under the good faith observance of said contracts and arbitration determination;

(4) The continued and uninterrupted flow of Interstate Commerce, in the Motion Picture Industry, under the good faith observance of said contracts and arbitration determination;

(5) The maintenance of law and order, observance of said contracts and arbitration determination, as is alleged in paragraph XXXIV [R. 21].

A state of emergency exists and can only be relieved by declaratory judgment, binding upon all parties, as is alleged in paragraph XXXV [R. 22].

Laws Involved.

This case involves the following laws, which are set forth in Appendix B.

1. The Fifth Amendment to the Constitution.

2. R.S. 1980, as amended (8 U. S. C. 47) upon conspiracy to interfere, and interference, with civil rights.

3. R.S. 722, as amended (28 U. S. C. 729) upon proceedings in vindication of civil rights.

4. The National Labor Relations Act, Section 7, upon the right of employees to organize, to bargain collectively, and to engage in concerted activities for bargaining, mutual aid and protection; as said section has been reenacted within Section 7 of the Labor-Management Relations Act of 1947.

5. Judicial Code, Section 24, paragraphs 1, 8, 12, as amended (28 U. S. C. 41(1), (8), (12)), upon the original jurisdiction of District Courts.

6. Judicial Code, Section 274d, as amended (28 U. S. C. 400), authorizing declaratory judgments.

7. Remedial Section 301 of the Labor-Management Relations Act of 1947, giving jurisdiction in suits for "violation of contracts" both "between an employer and a labor organization representing employees in an industry affecting commerce * * * and "between any such labor organizations, * * * without regard to the citizenship of the parties."

Questions Involved.

The questions involved are:

1. Whether the United States District Court had jurisdiction in this suit, for declaratory relief only, without diversity of citizenship, because the case arose under the Fifth Amendment to the Constitution and said laws of the United States, as alleged in paragraphs VIII, IX, X and XXXIV 4 [R. 7, 21].

2. Whether jurisdiction has since been conferred by remedial Section 301 of the Labor-Management Relations Act of 1947. [App. E.]

Non-Resistance by Brotherhood of Carpenters.

The defendant United Brotherhood of Carpenters and Joiners of America appeared, and in the appearance stated that it "does not contest the granting of the prayer of plaintiffs' amended complaint." [R. 68.]

Wherefore your petitioners pray that a writ of certiorari may be issued by this Court.

Respectfully submitted,

ZACH LAMAR COBB,
Attorney for Petitioners.

March 30, 1948.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. .....

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

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THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, LOEW'S INCORPORATED, PARAMOUNT PICTURES, INC., WARNER BROTHERS PICTURES, INC., COLUMBIA PICTURES CORPORATION, SAMUEL GOLDWYN PRODUCTIONS, INC., REPUBLIC PRODUCTIONS, INC., HAL E. ROACH STUDIO, INC., TECHNICOLOR MOTION PICTURE CORPORATION, TWENTIETH CENTURY FOX FILM CORPORATION, R. K. O. RADIO PICTURES, INC., UNIVERSAL PICTURES COMPANY, INC., and ASSOCIATION OF MOTION PICTURE PRODUCERS, INC.,

Respondents.

BRIEF IN SUPPORT OF FOREGOING PETITION FOR A WRIT OF CERTIORARI.

Opinion Below.

The opinion in the District Court is reported in 70 Fed. Supp. 1008 [R. 122; App. A]. The *per curiam* opinion of the said Circuit Court of Appeals is not yet reported, but is found in the record [R. 143], as follows:

> "For the reason stated in its opinion (70 F. Supp. 1008), the judgment of the District Court is affirmed."

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on January 16, 1948 [R. 144]. The jurisdiction of this Court is invoked under Section 240 of the Judicial Court, as amended (28 U. S. C., Sec. 347).

Statement of the Case.

A statement of the case has been given in the foregoing petition (*supra* 2), and is referred to so as to avoid repetition.

Specifications of Error.

The specifications of error presented in the Circuit Court are here adopted as follows:

> "1. The court erred in its judgment dismissing this action for lack of jurisdiction, for the reason that the court had jurisdiction under Section 400, Title 28, United States Code Annotated; Sections 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and each of them; and the Constitution of the United States, Amendments V and XIV.
>
> "2. The court erred in its judgment dismissing this action for lack of jurisdiction, for the reason that this suit is of a civil nature which arises under the Constitution and Laws of the United States, particularly under the Act of Congress of July 5, 1935, commonly referred to as the National Labor Relations Act, and the laws of the United States re-

lating to interstate commerce, and was instituted pursuant to the provisions of said National Labor Relations Act, and laws of the United States relating to interstate commerce, and also under the general equity jurisdiction of the court.

"Appellants will aso ask consideration of the provisions of the Labor-Management Relations Act of 1947, in the event it shall have become law pending appeal."

ARGUMENT.

Attention is called to these statements in the memorandum opinion of the District Court, as quoted in the petition (*supra* 2-4):

(1) "This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated," [R. 122, App. 49], as they apply to all points in argument.

(2) To "determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands)," the IATSE. [R. 122, App. 49.]

(3) "Thus, we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other." [R. 122, App. 49.]

(4) "The defendant studios and Stagehands have moved to dismiss on the grounds that: (1) this court lacks jurisdiction;" [R. 122, App. 49.]

(5) "The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship." [R. 122, App. 49.]

The memorandum opinion of the Court, ordering the case dismissed "for want of jurisdiction" [R. 128, App. 55] contains this statement of the issue [R. 123, App. 50]:

(6) "* * * Plaintiffs allege (paragraph VIII):

"'Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Section 41(1), 41(8), 41(2), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Anontated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV.'

"If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the court must dismiss the action for want of jurisdiction."

After a discussion of the Fifth Amendment and the respective statutes the Court concluded:

(7) "* * * Therefore, this suit does not arise under the Constitution or laws of the United States, and this court lacks jurisdiction." [R. 128, App. 55.]

Upon this issue of jurisdiction on the date of dismissal, and upon the additional question of jurisdiction now under remedial section 301 of the Labor-Management Relations Act of 1947, this petition is respectfully presented.

POINT I.

The Court Had, and Has Jurisdiction Without Diversity of Citizenship, if the Fifth Amendment and Related Laws Guarantee the Civil Right to Work Under Contracts, and to Negotiate Under the Terms Thereof, in Accordance With Section 7 of the National Labor Relations Act, as Amended, Free From Conspiracy and Interference by Private Parties.

The statement of the court in (1) to (7), inclusive, as quoted at the beginning of argument (*supra*), shows the nature of the suit, the relief sought, and the issue of whether the court has jurisdiction, without diversity of citizenship, because the case arises under the Constitution and laws of the United States. Particular attention is called to (3), showing that petitioners asked the court

> "* * * to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other."

The memorandum opinion of the District Court, in dismissing the case for want of jurisdiction [R. 126, App. 53], states:

> "In Gully v. First National Bank, 299 U. S. 109, 81 L. Ed. 70, 57 S. Ct. 96, Mr. Justice Cardozo said, at page 112:
>
> " 'To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. * * * The right or immunity must be such that it will be

supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another.' "

No higher authority can be cited than an opinion written by the late Justice Cardozo, but the law, as so stated, should be given its correct meaning as it applies to the allegations of the complaint in this case.

1. The Fifth Amendment Guarantees a Person's Liberty and Property: (a) in the Right to Work; and (b) in the Right to Negotiate and Contract, Under the National Labor Relations Act, as Reenacted in the Labor-Management Relations Act of 1947.

Constitution, Amendment V:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *"

Nissen v. International Brotherhood of Teamsters, etc., et al., 229 Iowa 1028, 295 N. W. 858; 141 A. L. R. 598, at page 614:

"* * * their rights under this contract with their employer were valuable property rights of which they were wrongfully deprived by the acts of the defendants. Such rights are guaranteed by the Fifth Amendment of the Federal Constitution. Cameron v. International Alliance, etc., 118 N. J. Eq. 11, 176 A. 692, 696, 97 A. L. R. 594. 'There is no more sacred right of citizenship than the right to pursue umolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor.' "

Roseland v. Phister Mfg. Co., 125 F. (2d) 417 at 419:

"The language of the statute (Sherman Act) * * * includes any person who shall be injured in his business or property. * * * In a somewhat more truly economic, legal and industrial sense, it includes that which occupies the time, attention, and labor of men for the purpose of livelihood or profit,—persistent human efforts which have for their end pecuniary reward. It denotes 'the employment or occupation in which a person is engaged to procure a living.' Allen v. Commonwealth, 188 Mass. 59, 74 N. E. 287, 288, 69 L. R. A. 599."

Schneider v. Duer, et al., 170 Md. 326, 184 Atl. 914 at 919:

"The right to engage in useful and productive labor is common to all men, Dasch v. Jackson (Md.), 183 A. 534, 538, and in a constitutional sense is property of which one may not be deprived except by due process of law. * * *"

Carroll, et al. v. Local No. 269 International Brotherhood of Electrical Workers, et al., 133 N. J. Eq. 144, 31 A. (2d) 223 at 224:

"It is not inappropriate, however, to remark that the right to earn a livelihood is a property right which is guaranteed in our country by the fifth and fourteenth amendments of the federal constitution, * * *"

Bautista v. Jones, 25 Cal. (2d) 746 at 749:

"The right to work, either in employment or independent business, is fundamental and, no doubt, enjoys the protection of the personal liberty guarantee of the Fourteenth Amendment to the federal Constitution, as well as the more specific provisions of our state Constitution. * * *"

2. The Right to Negotiate a Formal Agreement, Under Section 7 of the National Labor Relations Act, as Amended, and as So Provided in the Exhibit "A" Interim Agreement, Is Also a Property Right Guaranteed by These Amendments.

Merit Oil Co. v. Director of Division of Necessaries of Life, 319 Mass. 301, 63 N. E. (2d) 529 at 530:

> "The right of every citizen to enjoy liberty and to acquire and possess property, including the right to engage in any lawful private business or occupation, is protected * * * by the Fourteenth Amendment to the Constitution of the United States. And the right to engage in such a business or occupation carries with it the making of contracts, * * *"

Morris v. Holhouser, 220 N. C. 293, 17 S. E. (2d) 115 at 117, is quoted freely because of the cases it cites:

> "The privilege of contracting is both a liberty and a property right. State Street Furniture Co. v. Armour & Co., 345 Ill. 160, 177 N. E. 702, 76 A. L. R. 1298. The right to contract is recognized as being within the protection of the Fifth and Fourteenth Amendments to the Constitution of the United States, Bayside Fish Flour Co. v. Gentry, 297 U. S. 422, 56 S. Ct. 513, 80 L. Ed. 772; Ex parte Hayden, 147 Cal. 649, 82 P. 315, 1 L. R. A., N. S., 184, 109 Am. St. Rep. 183; West Coast Hotel Co. v. Parrish, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A. L. R. 1330; Highland v. Russell Car & Snow Plow Co., 279 U. S. 253, 49 S. Ct. 314, 73 L. Ed. 688; 11 Am. Jur. 1154, 1156; and protected by state Constitutions. McGuire v. Chicago, etc. Railway, 131 Iowa 340, 108 N. W. 902, 33 L. R. A., N. S., 706. 'It has been held that the right to make contracts is embraced in the conception of liberty as guaranteed by the Constitution.' Chicago, B. & Q. R. Co. v. Mc-

Guire, 219 U. S. 549, 31 S. Ct. 259, 262, 55 L. Ed. 328. 'Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property.' Coppage v. aKnsas, 236 U. S. 1, 35 S. Ct. 240, 243, 59 L. Ed. 441, L. R. A. 1915C, 960. 'The freedom of the right to contract has been universally considered as guaranteed to every citizen.' Stephens v. Hicks, 156 N. C. 239, 72 S. E. 313, 316, 36 L. R. A., N. S., 354, Ann. Cas. 1913A, 272."

3. Petitioners' Federal Rights Under Section 7 of the National Labor Relations Act, as Reenacted in the Labor-Management Relations Act of 1947, Are Entitled to a Federal Remedy in the Federal Courts.

Texas & N. O. R. Co. v. Brotherhood Ry. & S. S. Clerks, 281 U. S. 548, 569 (50 S. Ct. 427; 74 L. Ed. 1034):

> "* * * in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists. *Marbury v. Madison,* 1 Cranch. 137, 162, 163, 2 L. ed. 60, 68, 69."

Marbury v. Madison, 1 Cranch. 137 (2 L. Ed. 60, 69), amplifies this all important principle of law with the following statement, at 163:

> "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."

POINT II.

The District Court Had, and Has, Original Jurisdiction, Under Judicial Code Section 24(1)(8) (28 U. S. C. 41(1)(8)), Because This Case Arises Under the National Labor Relations Act, as Reenacted in the Labor-Management Relations Act of 1947.

Judicial Code, Section 24 (28 U. S. C. 41):

"* * * Original jurisdiction. The district courts shall have original jurisdiction as follows:

"(1) United States as plaintiff; civil suits at common law or in equity. First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interests and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, * * *"

"(8) Suits for violation of interstate commerce laws. Eighth. Of all suits and proceedings arising under any law regulating commerce."

1. Petitioners' Long-standing Contract Between Their Union, Local 946, and the Respondent Companies, as Extended and Now Existing in the Exhibit "A" Contract of July 2, 1946, Was Negotiated Under the National Labor Relations Act, Section 7 (29 U. S. C. 157).

"§157. Right of employees as to organization, collective bargaining, etc.

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Paragraphs VIII and IX [R. 9], of petitioners' complaint, being concise in alleging the contracts, are respectfully set forth as follows:

> "XIII. Since the beginning of the making of motion pictures in the Southern District of California, and until events related hereinafter, plaintiffs and the class for which they sue have been employed by defendant Motion Picture Companies under the terms of suceeding contracts for the performance of any and all carpenter work in connection with the making of motion pictures, including the construction of all sets and stages, platforms, buildings, and parts of building, the operation of all wood working machinery and tools, the making of all furniture and wood fixtures, the performing of all trim and mill work, the erection, modeling and remodeling, destruction and dismantling of all scaffolds, platforms, frames, buildings and streets, and the performance of all labor involving the use of carpenter tools.
>
> "XIV. A basic agreement between defendant Motion Picture Companies and defendant Carpenters Union covering rates of pay, tenure, seniority, vacations, and other terms and conditions of employment and giving members of said Carpenters Union the exclusive right to do any and all carpenter work for said companies was agreed to and executed on or about November 29, 1926, and has been continued in effect by the parties with periodic adjustments, supplements, and amendments up to the present time;
>
> "The current contract between said defendants, referred to as the Beverly Hills Interim Agreement of July 2, 1946, is attached here to as Exhibit "A" and incorporated herein by reference."

2. Petitioners Work in the Studios, Under Said Contract, Was a Necessary Link in the Making of Motion Pictures for Interstate Commerce.

Paragraph XXXIV of the complaint [R. 21] alleges that:

> "The declaratory relief sought herein is the only remedy available to plaintiffs to maintain."
>
> "4. The continued and uninterrupted flow of interstate commerce in the motion picture industry under the good faith observance of said contracts and arbitration determination;"

It is also alleged in Paragraph IX [R. 7], for the purposes of Section 24(1) of the Judicial Code that:

> "The matter in controversy herein, being the right to work for wages, exceeds the value of Three Thousand Dollars ($3,000.00), exclusive of costs and interest, as to each plaintiff herein, and arises under the Constitution and laws of the United States."

3. Petitioners Have a Federal Right Under Said Labor Law to Their "Wage Scales, Hours of Employment and Working Conditions," as Provided in Said Exhibit "A" Contract.

The current contract is found in the Exhibit "A" interim agreement [*supra,* R. 29-34; App. C, 59]. It covers "wage scales, hours of employment and working conditions" [R. 33; App. 64]. This interim agreement was negotiated for petitioners, and the other Carpenters for whom they sue, by their union, Carpenters Hollywood Studio Local 946 [R. 33; App. 59, 64], under Section 7 of the National Labor Relations Act (29 U.S.C. 157):

J. I. Case Co. v. Nat. Lab. Rel. Bd., 321 U. S. 332, 334 (64 S. Ct. 576; 88 L. Ed. 762):

> "* * * Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. * * *"

4. Petitioners Also Have a Federal Right Under Said Labor Law to Their Employment, as Provided in Said Exhibit "A" Contract, and as Confirmed With Their Compliance Therewith.

The agreement contains the provisions for "all crafts going back to work on Wednesday a. m., July 3, 1946." [R. 34; App. 63.] This provision constitutes an employment contract.

Standard Oil Co. v. Lyons, 130 F. (2d) 965, 968:

> "In a contract between master and servant, formality is not essential. 'It may be accomplished with few words, or may be implied from conduct without words. Pfister v. Doon Elec. Co., 199 Iowa 548, 202 N. W. 371, 374. An offer for a bilateral contract requires an acceptance by the offeree to make the contract. The effect of acceptance is to convert the offer into a binding contract. Acceptance by the offeree may be inferred from any words indicating assent to the offer. * * * We think the words used were sufficient to constitute a bilateral contract. In effect, Bergstedt asked for a promise that Lyons would be to work on Monday, and Mrs. Lyons gave him that promise."

That the employment contract was ratified by the Carpenters is amply alleged in paragraphs XIII and XIV [R. 9-10, 19-20; *supra* 23].

5. Petitioners Also Have a Federal Right, Under Said Labor Law to Continue Negotiations With the Companies, as Provided in Said Contract.

The Exhibit "A" agreement consists of the minutes of a meeting of the Producers Labor Committee, attorneys and respentatives of the Conference of Studio Unions (including the Carpenters Union), the Central Labor Council, the respondent IATSE, and others, held in Beverly Hills, on Tuesday, July 2,. 1946, "covering agreements reached and effective pending the formal signing of contracts." This statement in the caption to the minutes was re-stated by this sentence in the minutes: "An interim agreement will be entered into pending drawing up formal agreements." [R. 29; App. 60.]

This interim agreement was so "entered into pending drawing up formal agreements" by the letter from Pat Casey, Chairman of the Producers Committee, to the President of the Conference of Studio Unions, which included petitioners' Carpenters Union Local 946, on said July 2, 1946, as follows [R. 28; App. 59]:

> "Pending the completion of contracts between the individual unions, members of the C. S. U., and the major studios, these Minutes (copy attached herewith) shall constitute an Interim Agreement."

6. The Respondent Companies, in Conspiracy With the IATSE, Violated Said Federal Rights of Petitioners, by Their Breach of Said Contract, and by Their Mass Dismissal of the Carpenters.

In violation of this agreement, the respondent Companies discharged the Carpenters from their employment, and substituted IATSE members and permittees, for them in their carpenters' work.

The breach of said contract by the respondent Companies, acting in concert, is alleged in paragraph XXXI [R. 19].

The conspiracy of the respondent Companies, and respondent IATSE, is alleged in the second cause of action [R. 22-26; App. F, 74].

The discharge of twelve hundred carpenters by the respondent Companies, in violation of said contracts, is alleged in paragraph XXVI [R. 17].

7. Petitioners, Therefore, Have a Cause of Action, in the Jurisdiction of the Federal Court, to Protect Their Said Rights.

Steele v. Louisville & Nashville R. R. Co., 323 U. S. 192, 200 (65 S. Ct. 226, 89 L. Ed. 173):

> "* * * As we have pointed out with respect to the like provision of the National Labor Relations Act in J. I. Case Co. v. National Labor Relations Bd., *supra* (321 U. S. 338, 88 L. Ed. 768, 64 S. Ct. 576): 'The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the represented unit' * * *"

Texas & N. O. R. Co. v. Brotherhood Ry. & S. S. Clerks (*supra* 21);

Marbury v. Madison (*supra* 21).

POINT III.

The Court Also Had, and Has, Original Jurisdiction, Under Said Judicial Code Section 24, to Act Upon the December 26, 1945, Award of the A. F. of L. Arbitration Committee, and to Enforce the Committee's Unanimous Agreement in It to Observe the Historic, and Existing, Division of Work Between the Carpenters and IATSE, and the Committee's August 16, 1946 Clarification of Said Unanimous Decision.

Reference is made to *California State Brewers' Institute v. International Brotherhood of Teamsters, etc.*, 19 F. Supp. 824(1), and to *Green v. Obergfell*, 12 F. (2d) 46(17), upon the authority of the A. F. of L., and its Executive Council.

1. At the Time of the December 26, 1945, Award, the Carpenters Were Engaged in Their Historic Work, Under Their Contracts, Pursuant to the Cincinnati October, 1945, Agreement "That All Employees Return to Work Immediately."

Reference is made to following paragraphs of the complaint:

To paragraph XIX [R. 12], showing the Cincinnati agreement between the Companies, IATSE and Carpenters including provision that:

> "1. The Council directs that the Hollywood strike be terminated immediately.
>
> "2. That all employees return to work immediately."

Paragraph XX [R. 13], showing the return of the Carpenters to their historic work pursuant thereto.

2. Immediately After Said December 26, 1946, Award, in January, 1946, Said Unanimous Decision of the Arbitration Committee to Follow the Historic Division of Work, Was Violated by the Companies, in Conspiracy With the IATSE, in Discharging Carpenters From Their Historic Work, and in Replacing Them With IATSE Members and Permittees.

Reference is made to paragraph XXV [R. 16], showing the immediate misinterpretation and misapplication of said award by the respondent Companies, and IATSE, in the discharge during January, 1946 of approximately five hundred Carpenters from their historic work, and existing employment, and substitution of IATSE members and permittees in their places.

3. Said Breach of the Award, by the Conspiring Companies and the IATSE, Made It Necessary for the A. F. of L. Arbitration Committee to Issue Its August 16, 1946, Clarification, to Carry Out Its Original Unanimous Agreement to Observe the Historic Division of Work, and Its Intention That Its Award of December 26, 1945, Have That Effect.

Reference is made to the following paragraphs of the complaint:

To paragraph XXVII [R. 17], showing the necessity for, and issuance of, the August 16, 1946 clarification by said A. F. of L. Committee, to state the true intention of said December 26, 1945 award. [App E, 72.]

To paragraph XXVIII [R. 18], showing the effort of President Green, of the A. F. of L., to bring about the acceptance and observance of said award and clarification.

4. Thereafter, Pursuant to Conspiracy, the IATSE Repudiated Said August 16, 1946, Clarification, and Thereby Repudiated the Intent of the December 26, 1945, Award; and the Respondent Companies, Acting in Conspiracy With the IATSE Conducted Their Mass Dismissal of an Additional Twelve Hundred Carpenters, and Turned Their Historic Work Over to the IATSE for Its Members and Permittees.

Reference is made to the following paragraphs in the complaint:

To Paragraphs XXIX and XXX [R. 19], showing the observance, by the Carpenters, of the contract, and the award, as clarified:

To Paragraph XXXI [R. 19], showing the failure and refusal of the respondents, IATSE and Companies, to abide thereby.

To Paragraph VII of the second cause of action [R. 25], showing the repudiation by the IATSE of the clarification [App. F, 77; G, 80]; and

To Paragraph XXVI of the first cause of action [R. 17], showing the mass discharge by the respondent Companies of approximately twelve hundred Carpenters from their employment, and the substitution for them by IATSE members and permittees.

POINT IV.

The District Court Also Has Original Jurisdiction Under Remedial Section 301(a) of the Labor-Management Relations Act of 1947 (29 U. S. C. (Supp.) 185 (a)):

"§185. Suits by and against labor organizations—Venue, amount, and citizenship.

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

1. Section 301 of the Labor-Management Act, Being Remedial, Is Retroactive in Its Application to This Suit.

Funkhouser v. J. B. Preston Co., 290 U. S. 163 (54 S. Ct. 134, 78 L. Ed. 243) at 167:

"* * * The statute in question concerns the remedy and does not disturb the obligations of the contract. (Citing cases.) The contractual obligation of appellants was to take and pay for the described articles, and the law, in force when the contract was made, required that in case of breach appellants should make good the loss sustained by the appellee. The ascertainment of that loss, and of what would constitute full compensation, was a matter of procedure within the range of due process in the enforcement of the contract. 'To enact laws providing remedies for a violation of contracts' and 'to alter or enlarge those remedies from time to time,' was with-

in the competency of the legislature. Waggoner v. Flack, 188 U. S. 595, 47 L. ed. 609, 23 S. Ct. 345, *supra*. The mere fact that such legislation is retroactive does not bring it into conflict with the guaranties of the Federal Constitution (League v. Texas, *supra* (184 U. S. p. 161, 46 L. ed. 481, 22 S. Ct. 475) and when the action of the legislature is directed to the enforcement of the obligations assumed by the parties and to the giving of suitable relief for non-performance, it cannot be said that the obligations of the contract have been impaired. The parties make their contract with reference to the existence of the power of the State to provide remedies for enforcement and to secure adequate redress in case of breach. Henley v. Myers, 215 U. S. 373, 54 L. ed. 240, 30 S. Ct. 148, *supra*."

Larkin v. Saffarans, 15 Fed. 147 at 150:

"* * * And the rule is that 'where the enactment deals with procedure only, unless the contrary be expressed, the enactment applies to all actions, whether commenced before or after the passing of the act.' Broom, Legal Max. 35; Wright v. Hale, 6 Hurl. & N. 227; Kimbray v. Draper, L. R. 3 Q. B. 160.

"This is only in accordance with the general rule that all remedial legislation shall be liberally construed, and particularly should this be so where new remedies are given, and with reference to the bestowal of jurisdiction on the courts. * * *"

Federal Reserve Bank of Richmond v. Kalin, 77 F. (2d) 50 at 51:

"* * * It is clear that the grant of jurisdiction given by the statute applies to causes of action in

existence at the time of its passage as well as to those subsequently arising. 'Statutes relating to practice and procedure generally apply to pending actions and those subsequently instituted, although the cause of action may have arisen before.' Link v. Receivers of Seaboard Air Line Ry. Co. (C. C. A. 4th), 73 F. (2d) 149, 151; Hallowell v. Commons, 239 U. S. 506, 36 S. Ct. 202, 60 L. Ed. 409; Baltimore & P. R. Co. v. Grant, 98 U. S. 398, 25 L. Ed. 231.

"For the reasons stated, we think that the court below had jurisdiction of the action, and that the order dismissing it should be reversed."

Connett et al. v. City of Jerseyville, 96 F. (2d) 392 at 400:

"It is conceded that, as a general rule, a statute will not be given a retroactive effect unless it clearly appears that it was the intention of the legislature so to do; nor will it be done if it will disturb or interfere with vested or substantive rights. However, a curative or remedial enactment which merely affects the remedy or procedure will be given a retroactive effect. Funkhouser v. J. B. Preston Co., 290 U. S. 163, 54 S. Ct. 134, 78 L. Ed. 243; McKinley v. McIntyre, 360 Ill. 382, 196 N. E. 506; Berkovitz v. Arbib & Houlberg, Inc., 230 N. Y. 261, 130 N. E. 288."

2. Petitioners Have the Right to Sue, Under Section 301(a) of the Labor-Management Relations Act of 1947, on Contracts Negotiated for Them by Their Union, Local 946.

J. I. Case Co. v. National Lab. Rel. Bd., 321 U. S. 332, 336 (64 S. Ct. 576, 88 L. Ed. 762):

> "But, however engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement, * * *."

Beck v. Reynolds Metals Co., 163 F. (2d) 870 at 871:

> "The sole question for our determination is whether the plaintiff had a right to sue the defendant under this contract. The plaintiff is not a formal party to the contract, nor is he mentioned anywhere therein. One does not have to be a formal party to a contract nor be mentioned therein to have a right to sue thereon, nor does the promise have to be for the sole benefit of the third party who attempts to sue, if it is the intention of the formal parties to the contract to make it for his direct or substantial benefit. (Citing cases.)"

Schlenk v. Lehigh Valley R. Co., 74 Fed. Supp. 569 at 571:

> "* * * Such a collective bargaining agreement is the joint and several contract of the members of the union, made by the officers of the union as their agents, and is enforceable against one for whose general benefit such agreement was made, even though it resulted in no benefit to such individual. Hartley v. Brotherhood of Railway and Steamship Clerks, etc., 283 Mich. 201, 277 N. W. 885."

POINT V.

Having Original Jurisdiction Under Said Laws of the United States, the District Court Had, and Has, Jurisdiction in This Case for Declaratory Relief Only, Under Judicial Code 274d (28 U. S. C. 400).

The statement of the court in (1), (2) and (3), as quoted at the beginning of argument, shows the nature of the suit and the relief sought.

1. Section 274d of the Judicial Code (28 U. S. C. 400), Expressly Authorizes Declaratory Relief "Whether or Not Further Relief Is or Could Be Prayed," and, Therefore, Gives the District Court Jurisdiction in This Case for Declaratory Relief Alone, Subject Only to the Court Having Original Jurisdiction Under the Constitution on Laws of the United States.

Section 274d (28 U. S. C. 400, Supp.):

> "Declaratory judgments authorized; procedure.
>
> "(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such."

2. The Controversy Over These Contracts Is Actual, Involves the Rights of the Petitioners, and Other Carpenters in Their Local 946, and in the Interstate Commerce of the Motion Picture Industry.

Paragraph XXXIV [R. 21] alleges:

"The controversy is actual and involves more than the rights of these plaintiffs and of the thousands of persons of the class for whom they sue but involves the rights of each and every party hereto; and, in addition to said individual rights, this controversy gravely and seriously involves the public interest:

"The declaratory relief sought herein is the only remedy available to plaintiffs to maintain:

"1. The Constitutional and legal right of these plaintiffs, and of their class, and all others involved directly or indirectly, to work at their chosen vocations;

"2. The Constitutional and statutory right of plaintiffs to perform and of all other parties hereto to have performed that labor prescribed under the contracts, decisions, findings and awards alleged herein;

"3. The continued and uninterrupted production of motion pictures in said studios under the good faith observance of said contracts and arbitration determination;

"4. The continued and uninterrupted flow of interstate commerce in the motion picture industry under the good faith observance of said contracts and arbitration determination; and * * *."

3. The Courts Have Upheld Federal Jurisdiction to Construe Contracts in Suits for Declaratory Relief Alone.

Mississippi Power & Light Co. v. City of Jackson, 116 F. (2d) 924, was a suit for declaratory judgment "determining plaintiff's rights under a contract with defendant" (p. 924) where the court "entered an order dismissing the cause for want of jurisdiction" (p. 925). The court held:

> "While the declaratory judgment act has not added to the jurisdiction of the federal courts. it has added a greatly valuable procedure of a highly remedial nature. Extending by its terms to all cases of actual controversy 'except with respect to Federal taxes,' it should be, it has been given a liberal construction and application to give it full effect. * * *" (p. 925.)
>
> "An authoritative determination as to the present status of the contract and of the rights and duties of the parties under it is essential in the interests of both city and company and of the public that both serve. For such a case, the declaratory judgment act is made to order. * * *" (p. 926.)

4. Loew's, Inc., Sought and Obtained Federal Court Jurisdiction, in Its Suit for Declaratory Relief Against a Local Union of the IATSE, to Protect It From IATSE Threats and Conspiracy Similar to the Threats and Conspiracy in This Case.

Loew's Incorporated v. Basson, et al., 46 F. Supp. 66, was a civil action, brought by Loew's against an IATSE local to protect itself against IATSE threats there similar to the threats here, and to resist a conspiracy with the IATSE there similar to Loew's own conspiracy with

the IATSE here. Beginning on page 69, the opinion there states:

> "The complaint seeks a declaratory judgment pursuant to Section 274d of the Judicial Code, 28 U. S. C. A. §400; (a) that the demands of the defendant are illegal and contrary to law and compliance therewith by plaintiff is prohibited by law; (b) that in making these demands, defendant is not, and in enforcing said demands by strikes or other means of economic compulsion, defendant would not be a person participating in a labor dispute within the meaning of the Norris-LaGuardia Act; (c) that a contract between plaintiff and defendant which would include the terms and conditions set forth in defendant's letter of December 11, 1941, would be a contract in restraint of trade in violation of the Sherman Anti-Trust Act; (d) that compliance with defendant's demand would be a violation of the consent decree in United States v. Paramount Pictures, Inc., and (e) that if all of the distributors would comply with defendant's demands, a conspiracy would result which would constitute a violation of the Sherman Anti-Trust Act, * * * §1. The complaint also seeks a permanent injunction enjoining the defendant from taking any steps to call strikes and inducing 'IATSE' to call strikes."

The court upheld its jurisdiction.

5. The Principle Presented in This Case Was Determined by the Fifth Circuit in the Texoma Case, Where a Certiorari Was Denied.

Oil Workers International Union, et al. v. Texoma Natural Gas Co., 146 F. (2d) 62, is a suit for declaratory relief upon a controversy that arose under "the rights

of the parties under a contract entered into by the appellee and Oil Workers International Union, Local No. 463, as bargaining agent for appellee's employees" to determine whether the employer "had the right under the contract to change from 2 40-hour week to a 48-hour week without negotiating an amendment to the contract with the Union."

In this case, at page 65, the Court held that:

> "The court below found that the controversy between the parties related to their legal rights and liabilities under their contract; that the parties had taken adverse positions with respect to their respective rights and obligations; that, therefore, a justiciable controversy existed, appropriate for judicial determination under the Declaratory Judgment Act. We agree. An employer may establish the seniority rights of an employee in dispute with other employees, as well as general rights which their contract relationship establishes, without waiting to be sued for breach or for damages or for specific performance, and thus secure an 'interpretation of the contract during its actual operation' and stabilize an 'undertain and disputed relation.' Exhaustion of the administrative remedies granted by the War Labor Disputes Act, 50 U. S. C. A. Appendix §1501 *et seq.*, and Executive order No. 9017, of January 12, 1942, 50 U. S. C. A. Appendix §1507 note, to employer and employee is not a prerequisite to the bringing of a court action by either party for an alleged violation by the other of a labor agreement.
>
> "The judgment appealed from is correct. It is accordingly affirmed." Certiorari was denied, 324 U. S. 872.

POINT VI.

The Court Should Take Jurisdiction in This Case to Afford a Federal Remedy for Federal Rights Under the National Labor Relations Act, as Amended, and to Reconcile Decisions That Conflict in Principle.

While There May Not Be Complete Conflicts Between the Decision in This Case and Decisions in Other Circuits, There Are Conflicts in Principle.

In the case of *Oil Workers International Union Local 463, et al. v. Texoma Natural Gas Co.* (*supra*), in the Fifth Circuit, diversity of citizenship was pled, but the issue was with the nation-wide CIO upon rights in a contract negotiated under Section 7 of the National Labor Relations Act (*supra*).

In the case of *Loew's Incorporated v. J. H. Basson,* individually, and as President of his unincorporated Local Union 306, in the District Court for the Southern District of New York (*supra*), diversity of citizenship was likewise pled against Basson and the local IATSE union, as to the nominal defendants. The issue, however, was with the nation-wide, unincorporated, IATSE, against whom there could be no diversity, as is shown by the following quotations from a photostatic copy of the complaint in that case:

> "4. International Alliance of Theatrical Stage Employees and Moving Picture Operators of United States and Canada (hereinafter referred to as 'IATSE'), is a voluntary unincorporated association consisting of more than seven members, the membership of which and of various associations affiliated with it is composed of individuals who engage in the

business and employment of furnishing personal services in the theatrical and motion picture industry.

"5. IATSE conducts its operations, business and affairs, at least in part, through numerous local unions, which are affiliated with it, each of which is a voluntary unincorporated association of more than seven members, having its own officers, by-laws, regulations and assessments. The business of each such local union is restricted to a certain geographical area, and the membership of each is confined to those who work in a particular craft in the industry with which IATSE is identified. One of such local unions is said Local 306, * * *"

"27. On August 31, 1940, the contract between Loew's and Local 306 covering the employment of projectionists in Loew's home office and in its New York exchange expired by its terms, but from said date the said employees have continued to be employed under the terms and conditions of said contract. Subsequently negotiations were had between Loew's and said Local 306 for a renewal of said contract.

"28. On December 11, 1941, Local 306, through its attorney, Mathew M. Levy, addressed a letter to Loew's, as follows:

> " 'Confirming conversation had yesterday with Messrs. Nicholas M. Schenck, Charles C. Moskowitz and yourself, on behalf of Loew's, Inc., on the one hand, and Mr. Joseph D. Basson and the writer, on behalf of Moving Picture Machine Operators' Union, Local 306, on the other hand, please be advised that our client, Local 306, is requesting that the collective agreement, to be executed between our representative clients, shall provide, among other satisfactory conditions of employment, such as wages, hours, working conditions, and term of contract, the following clauses in substance:

"'1. Employer agrees to supply, rent, lease, sell, deliver, license, distribute or provide films in the City of Greater New York only to such exhibitors as employ and continue to employ solely members of Local 306 as projectionists, and the Employer agrees not to supply, rent, lease, sell, deliver, license, distribute or provide film to any exhibitor in the City of Greater New York not employing members of Local 306.'"

"29. Thereafter conferences were had between representatives of Loew's and representatives of Local 306 and of IATSE. At such conferences Loew's was advised that Loew's must fully and immediately comply with the terms and conditions set forth in the said letter of Local 306, dated December 11, 1941, and that if Loew's shall fail so to comply, Local 306 will immediately call out on strike the members of Local 306 who are employed as projectionists in the home office and in the New York exchange of Loew's; that upon the request of Local 306, which will be made immediately, IATSE will call out on strike all the members of Local 306 who are employed as projectionists in the 65 motion picture theatres of the plaintiff in Greater New York; all the members of Local B51 who are employed in Loew's New York exchange, as well as all the members of any of the affiliated unions of the parent organization, IATSE, who are employed in Loew's studio at Culver City, California.

30. If the threats so made as aforesaid are carried out and strikes take place pursuant to such threats in the event Loew's shall fail to comply with the demands made upon it by Local 306 and IATSE, the business of Loew's in all of its branches, *i. e.*, the production, distribution and exhibition of motion pictures, will be seriously and irreparably damaged

and injured and in all likelihood will be brought to a complete standstill during the pendency of such strikes, resulting in money losses alone of millions of dollars.

"31. In addition to the above, IATSE and Local 306, through their spokesman and representatives, have advised the plaintiff and they will make similar demands upon each of the seven other hereinbefore named distributors of motion pictures, and that they will similarly call strikes against any and all of such other distributors as shall fail to comply immediately with said demands."

Upon the foregoing issue, after alleging diversity of citizenship against the nominal defendants, Loew's Incorporated also alleged that the action arose under the Sherman Act and under the consent decree in *U. S. v. Paramount Pictures, Inc., et al.*

"34. Compliance by Loew's with the demands of Local 306 would be in violation of law and of the rights of many other parties and especially in violation of the Act of Congress of July 2, 1890, entitled 'An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,' commonly known as 'The Sherman Anti-Trust Act,' U. S. C. A. Title 15, Section 1, and of the consent decree heretofore made and entered by this Court in the action entitled 'United States of America, plaintiff, against Paramount Pictures, Inc., *et al.*, defendants,' and in violation of plaintiff's contracts with its exhibitors.

"35. The plaintiff is a citizen of the State of Delaware. The defendant Local 306 is a voluntary unincorporated association organized under the laws of

the State of New York and having its office and place of business in the Borough of Manhattan in the City of New York, and the defendant Joseph D. Basson is a citizen of the State of New York, residing in the City of New York in said State. The amount in controversy herein exceeds, exclusive of interest and costs, the sum of $3,000. Also this civil action arises under the Act of July 2, 1890 known as the Sherman Anti-Trust Act, 26 Stat. 209, 15 U. S. C. A., Section 1, and under the Consent Decree which was entered in this court on November 20, 1940 in U. S. v. Paramount Pictures Inc., *et al.*"

Upon the foregoing, Loew's alleged the need for declaratory relief, and prayed a declaratory judgment, as follows:

"36. This is a case of an actual controversy involving civil and property rights as to which this Court, pursuant to Section 274(d) of the Judicial Code, 28 U. S. C. A., Section 400, has jurisdiction to declare rights and other legal relations, and the plaintiff is an interested party petitioning for such a declaration with reference to the demands of the defendant Local 306 and to the threats to enforce the said demands as hereinbefore set forth."

"WHEREFORE, the plaintiff prays:

"1. That this Court enter a declaratory judgment under Section 274(d) of the Judicial Code, 28 U. S. C. A. Section 400, (a) that the aforesaid demands of the defendants are illegal and contrary to law and compliance therewith by plaintiff is prohibited by law;

* * * (c) that a contract between the plaintiff and Local 306 which would include the terms and conditions as set forth in the aforesaid letter of December 11, 1941, or any terms or conditions similar thereto or to any part thereof, would be a contract in restraint of trade and commerce among the several States of the United States within the meaning of Section 1 of the Sherman Anti-Trust Act, 26 Stat. 209, 15 U. S. C. A. Section 1; (d) that compliance by the plaintiff with the aforesaid demands of the defendant Local 306 would be in violation of Section VI of the Consent Decree in U. S. v. Paramount Pictures Inc., *et al.,* and (e) that if all or a number of distributors of motion pictures should comply with the aforesaid demands of the defendant Local 306, or with any of them, the defendants and such distributors would engage in a conspiracy in restraint of trade and commerce among the several States of the United States within the meaning of Section 1 of the Sherman Anti-Trust Act, 26 Stat. 209, 15 U. S. C. A., Section 1."

This suit is brought under the National Labor Relations Act, as reenacted in the Labor-Management Relations Act of 1947, for similar declaratory relief against similar threats by the respondent IATSE, coupled with acquiescence by said Loew's Incorporated, and other respondent Companies, in the conspiracy between them and the IATSE, to deprive petitioners, and the class for whom they sue, of their right to work, and also of their right to further negotiate, under their existing contract, with the respondent Companies.

POINT VII.

This Court Has Approved Declaratory Relief in a Case of Conspiracy, of a Labor Group With Non-labor Groups, in Violation of Federal Law.

Allen Bradley Company, et al. v. Local Union No. 3, International Brotherhood of Electrical Workers, et al., 325 U. S. 797, 811, 812 (65 S. Ct. 1533, 89 L. Ed. 1939):

Summary of Argument.

It has been respectfully submitted under the foregoing points:

1. That the Court had, and has, original jurisdiction under the Fifth Amendment and related laws, if they guarantee the federal right to work under contract, and to negotiate further under the terms thereof, in accordance with Section 7 of the National Labor Relations Act, as amended, free from conspiracy and interference from private parties.

2. That the Court had, and has, original jurisdiction under the Judicial Code, Section 24(1)(8), because this case arises under said Section 7 of the National Labor Relations Act, as reenacted in the Labor-Management Relations Act of 1947.

3. That the Court had, and has, original jurisdiction under said Judicial Code, Section 24, to act upon, and enforce, the unanimous December 26, 1945, award of the A. F. of L. arbitration committee, to follow the historic, and existing, division of work between the Carpenters and

the IATSE, and the committee's August 16, 1946, clarification of said award to make that decision effective.

4. That the Court also now has additional original jurisdiction under remedial Section 301(a) of the Labor-Management Relations Act of 1947.

5. That having original jurisdiction, the Court had, and has, jurisdiction in this action for declaratory relief only.

6. That the Court has said original and declaratory jurisdiction under the principle established in *Oil Workers International Union etc. v. Texoma etc.* (*supra*) and *Loew's Incorporated v. Basson* (*supra*).

7. That this Court has approved declaratory relief in a case of conspiracy, of a labor group with non-labor groups, in violation of federal law.

In conclusion, it is respectfully prayed that the Court consider the importance of this case in the public interest. There can be no wholesome labor-management relations unless law, and labor-management contracts under law, and the right to continue negotiations under the terms of said contracts, and A. F. of L. arbitration awards, as intended, are held above the power of any private interests to nullify the contracts and awards, and thereby to nullify the law.

Respectfully submitted,

ZACH LAMAR COBB,
Attorney for Petitioners.

APPENDIX A.

Memorandum Opinion. [R. 122.]

This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated, to determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands), and others. The defendant studios and Stagehands have moved to dismiss on the grounds that: (1) this court lacks jurisdiction; (2) the court should, in the proper exercise of its discretion, decline to assume jurisdiction; and (3) the complaint fails to state a claim upon which relief can be granted. [101]

The forty-eight page complaint when analyzed presents nothing more or less than a request that this court interpret a private contract or agreement allocating certain work on stage sets in the moving picture industry. As stated by counsel in oral argument, the difference between the parties is simply who is "to drive the nails." The serious question before the court is whether this court has jurisdiction in the absence of diverstiy of citizenship.

Thus, we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with

each other. Since this is a court of limited jurisdiction, every case brought here must fall within the terms of a provision of some statute of the United States. Plaintiffs allege (paragraph VIII):

> "Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Section 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV."

If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the court must dismiss the action for want of jurisdiction.

28 United States Code Annotated 41(12) and 8 United States Code Annotated 47(3) give the District Courts jurisdiction in suits for damages on account of injury to the plaintiff's person or property, or the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of a conspiracy. Under 28 United States Code Annotated 41(12), damages are an essential part of the judgment, and damages will vary from person to person. Their rights are several, and a judgment in this action will not bind the parties not before the court. Pentland v. Dravo Corp., 3 Cir., 152 F. (2d) 851; [102] Bethlehem Shipbuilding Corp. v. Nylander, 14 Fed. Supp. 201. The decision here would not settle the entire controversy, and where that cannot be done, a complaint seeking a declaratory judgment should be dismissed. Angell v. Schram, 6 Cir., 109 F. (2d) 380,

382; United Electrical R. & M. W. v. Westinghouse Electric Corp., 65 Fed. Supp. 420, 423; Koon v. Bottolfsen, 60 Fed. Supp. 316.

Disregarding the limitations of said section on account of the requirement of damages, this court would still be without jurisdiction, since these statutes were passed to protect individuals from violations of their rights by State action, and none is here alleged. Love v. Chandler, 8 Cir., 124 F. (2d) 785, 786-7. Only rights of citizens under the laws of the United States are protected. Mitchell v. Greenough, 9 Cir., 100 F. (2d) 184, cert. denied 306 U. S. 659, 83 L. Ed. 1056, 59 S. Ct. 788. That being true, since more than Three Thousand Dollars is admittedly involved, this section can in no event confer any jurisdiction not already given by 28 U. S. C. A. 41(1), which is hereinafter discussed.

28 U. S. C. A. 41(1) and 8 U. S. C. A. 43 both provide for redress for deprivation of rights under color of any law, statute, ordinance, regulation, custom, or usage of any State or Territory, in express terms. It is not alleged that the defendants are acting under color of any State law, etc. so these sections cannot act to establish jurisdiction in this court. Allen v. Corsane, 56 Fed. Supp. 169; California Oil & Gas Co. v. Miller, 96 Fed. 12, 22; Picking v. Pennsylvania R. R., 151 F. (2d) 240, is not applicable here, because the wrongs alleged in that case were all under color of State law.

28 U. S. C. A. 729 merely establishes the procedure to be followed by the federal courts in certain classes of cases. This section has reference not to the extent or

scope of jurisdiction, nor to the rules of decision, but to the forms of procedures and remedy. In re Stupp, 23 Fed. Cas. No. 13,563; United States v. Reid, 12 How. 361, 365, 53 U. S. 361, 365, 13 L. Ed. 1023, 1025; Scaffidi v. United States, [103] 1 Circ., 37 F. (2d) 203, 207.

The Fifth and Fourteenth Amendments of the Constitution are designed to protect the individual from invasion of his rights, privileges and immunities by the federal and the State governments respectively. Corrigan v. Buckley, 271 U. S. 323, 330, 70 L. Ed. 969, 46 S. Ct. 521; Civil Rights Cases, 109 U. S. 3, 27 L. Ed. 969, 46 S. Ct. 521; neither Hague v. C. I. O., 307 U. S. 496, 83 L. Ed. 1385, 59 S. Ct. 972, 122 A. L. R. 695, nor Screws v United States, 325 U. S. 91, 89 L. Ed. 1495, 65 S. Ct. 1031, 162 A. L. R. 1330, has overruled these cases, even by implication, for the wrongs complained of in both the Hague and the Screws cases were committed by the government or under color of law.

28 U. S. C. A. 41(8) confers jurisdiction on the District Courts of the United States in "all suits and proceedings arising under any law regulating commerce," without regard to the jurisdictional amount requirement of 28 U. S. C. A. 41(1). Since more than Three Thousand Dollars is involved in this action, Section 41(8) will not establish jurisdiction in this court if it cannot be established under Section 41(1), which grants jurisdiction in all suits where the matter in controversy exceeds Three Thousand Dollars and "arises under the Constitution or laws of the United States."

It is not enough that the dispute should merely affect commerce to bring it within the scope of Section 41(8) or Section 41(1). Delaware, Lackawanna & Western R. R. v. Slocum, 56 Fed. Supp. 634.

In Gully v. First National Bank, 299 U. S. 109, 81 L. Ed. 70, 57 S. Ct. 96, Mr. Justice Cardozo said, at page 112:

> "To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. * * * The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another." [104]

Plaintiffs do not claim any violation of the right to bargain collectively under the National Labor Relations Act, 29 U. S. C. A. 157, nor the right to contract for employment, nor the right to contract collectively for employment. Plaintiffs assert that the right to work at one's chosen vocation within the terms of a contract negotiated under federal law, the National Labor Relations Act, has been violated. The bare right to work is not a right protected by federal law. Love v. United States, 8 Cir., 108 F. (2d) 43, cert. denied 309 U. S. 673, 84 L. Ed. 1018, 60 S. Ct. 716, and cases therein cited; Brents v. Stone, 60 Fed. Supp. 80, 84; Emmons v. Smitt, 58 Fed. Supp. 869, affirmed 6 Cir., 149 F. (2d) 869, 872.

From the mere fact that a right was established by federal law, it does not follow that all litigation growing therefrom arises under the laws of the United States. Actions growing from the issue of federal land grants do not arise "under the laws of the United States." Shoshone Mining Co. v. Rutter, 177 U. S. 505, 44 L. Ed. 864, 20 S. Ct. 726; Shulthis v. McDougal, 225 U. S. 561, 569, 56 L. Ed. 1205, 32 S. Ct. 704, 707; Marshall v. Desert Properties, 9 Cir., 103 F. (2d) 551, cert. denied 308 U. S. 563, 84 L. Ed. 473, 60 S. Ct. 74. An action brought to enforce a right under a contract which is made as the result of rights granted under the patent laws to receive royalties upon sale or license of the patented device is not an action arising under the laws of the United States. Odell v. Farnsworth, 250 U. S. 501, 504, 63 L. Ed. 1111, 39 S. Ct. 516. To come within the provisions of these sections, the suit must really and substantially involve a dispute respecting the validity, construction, or effect of some law of the United States, upon the determination of which the result depends Malone v. Gardner, 4 Cir., 62 F. (2d) 15; Delaware, Lackawanna & Western R. R. v. Slocum, 56 Fed. Supp. 634.

The only important issue in the case at bar is the interpretation of a contract. The meaning of this contract is not dependent on the National Labor Relations Act, whether it owes its existence to [105] that Act or not. A decision by this court that the Carpenters or the Stagehands, as the case may be, have the right to construct

stage sets would not involve consideration of the validity, construction, or effect of the Act. The desision would be based purely and simply upon contractual principles. Therefore, this suit does not arise under the Constitution or laws of the United States, and this court lacks jurisdiction.

In this memorandum opinion, this court has not attempted to cover the broad field of law cited in over two hundred and twenty-five cases referred to in the two hundred pages of briefs. To do so would require the writing of a treatise on various phases of the subjects of jurisdiction of the United States District Courts in labor disputes.

I have only attempted to outline my reasons for my conclusion that this court lacks jurisdiction. In view of my conclusion, it is unnecessary to pass upon the other questions raised by the various motions.

The above entitled action is hereby ordered dismissed for want of jurisdiction.

Dated: This 25 day of Feby., 1947.

BEN HARRISON,

Judge.

APPENDIX B.

Agreement. [In Exhibit B; R. 37.]

In compliance with the decision of the American Federation of Labor, a conference was called and held July 9, 1921, in the Executive Council Chamber of the American Federation of Labor. The organizations participating in the conference were represented as follows:

The United Brotherhood of Carpenters and Joiners of America:

Mr. Frank Duffy and Mr. John Cosgrove.

The International Alliance of Theatrical Stage Employees:

Mr. Harry L. Spencer, Mr. William F. Canavan, Mr. Richard J. Green.

The American Federation of Labor:

Mr. Samuel Gompers, Mr. James O'Connell and Mr. Hugh Frayne.

The entire subject of the differences of jurisdictional claims between the two first named organizations were thoroughly gone into with a view of reaching an agreement.

It is agreed by the International Alliance of Theatrical Stage Employees that all work done on lots or location and all work done in shops, either bench or machine work, comes under the jurisdiction of the United Brotherhood of Carpenters and Joiners of America.

It is agreed that:

All carpenter work in and around Moving Picture Studios belongs to the carpenter. This includes:

1. Any and all carpenter work in connection with the Moving Picture Studios, the construction of stages or platforms on which buildings or parts of buildings are to be erected.

2. All carpenter work in connection with the erection of any building or part of building, from which a picture is to be taken.

3. The operation of all wood-working machinery in the making of all furniture, fixtures, trim, etc., for use in Motion Picture Studios, belongs to the carpenter.

The carpenters lay no claim to what is usually termed or referred to as the property man, or those employed in placing furniture, laying carpets, hanging draperies, pictures, etc.

It is clearly understood that in so far as Section 2 of this part of the agreement is concerned and particularly the right to the setting up and striking of the scenes on the stages after the construction work has been completed, it shall be liberally and co-operatively construed so as to do no injustice to either the United Brotherhood of Carpenters and Joiners of America or the International Alliance of Theatrical Stage Employes.

Any differences arising as to the interpretation of this agreement and particularly of Section 2 hereof, shall be

adjusted by the International Presidents of both organizations.

For the United Brotherhood of Carpenters and Joiners of America:

JOHN T. COSGROVE,
First General Vice-President.

FRANK DUFFY,
General Secretary.

For Theatrical Stage Employees:

WM. F. CANAVAN,
RICHARD GREEN,
HARRY L. SPENCER.

[UNION LABEL]

APPENDIX "C."

[Exhibit "A", R. 28-34.]

PRODUCERS COMMITTEE
Pat Casey, Chairman

July 2, 1946

Mr. Herbert K. Sorrell,
President, Conference of Studio Unions,
4157 West Fifth Street
Los Angeles 5, California

My Dear Herb:

Pending the completion of contracts between the individual unions, members of the C.S.U., and the major studios, these Minutes (copy attached herewith) shall constitute an Interim Agreement.

Sincerely yours,

(signed) Pat Casey,
Pat Casey, Chairman
Producers Committee

Enclosure
PC/h

Minutes of Meeting of Producers Labor Committee and Attorneys and Representatives of the C.S.U., Central Labor Council, I.A.T.S.E., Basic Group, and Plumbers, Held in Beverly Hills on Tuesday, July 2, 1946, at 2:45 P. M., Covering Agreements Reached and Effective Pending the Formal Signing of Contracts.

C.S.U. is representing:

Painters	Janitors
Carpenters	Analysts
Machinists	Publicists
Electricians	Officers & Guards
Plumbers	Set Designers (#1421)
Sheetmetal Workers	Cartoonists

All of the above to get a 25% increase on base and negotiate some inequities in a few crafts.

All retroactive payments from expiration of previous contracts, most of which are January 1, 1946, except for new conditions such as night premiums at 6 p.m. etc., will become effective on July 15, 1946. Retro payments to be made within 30 days if possible. An interim agreement will be entered into pending drawing up formal agreements.

The 25% increases are on minimum wage scales and not on any overscale.

This deal is predicated on the recently concluded deal with the Independents and not on any new or changed deals which might be made later with them.

Arbitration:

C.S.U. as a body consisting of several locals will pledge itself to an arbitration procedure. If any of its members who subscribe to this plan fails to accept and to be guided by any arbitration award, he will not receive the support of the C.S.U. in its position.

This applies to Studio jurisdiction only and between locals.

Local #946 agrees to bind itself to the C.S.U. arbitration agreement and will find out if it can secure permission from its international to sign such an agreement as a local. All contracts will contain this arbitration clause —verbatim in each contract.

Any dispute other than wages should be submitted to arbitration. Skelton and Brewer will get together and make an agreement covering arbitration. Basis of arbitration will be the A.F.L. three man directive.

Any machinery set up for arbitration will not require the Electricians to withdraw their court action already started.

It was agreed to let each Studio interpret the directive and award the work where in its judgment it belongs under the directive and no work stoppage will be ordered for next 30 days or until the abitration machinery is set up.

Plant Protection:

Camp's dispute with Helm is a private matter. Not to be discussed here.

Analysts:

Get an increase of 25% on the base rate during the interim period starting July 15, 1946. Understood there will be some adjustment of inequities, negotiations during next thirty days.

Machinsts:

Both sides agree to let Machinists enjoy the 25% increase pending the N.L.R.B. decision. We are free to engage Machinists as individuals—not through either union, until the N.L.R.B. decision is made.

Publicists:

Both sides agree to let the Publicists enjoy the 25% increase pending the N.L.R.B. decision. Inequities to be presented in the 30 day period.

Officers & Guards:

Independent contract provides for $1.25 per hour for 12 months, escalating to $1.50 after 12 months. Night rates to be as negotiated with Producers.

Janitors:

No rates were established for the Independents on certain classifications now in the Majors' contracts, such as Window Washers, Floor Waxers, etc. These will be adjusted relatively.

Cartoonists:

We will negotiate with Cartoonists with a 25% floor and inequities will be negotiated.

Set Designers:

Chadwick agreed not to hire anyone below the rates now being paid. Majors agree to an increase of 25% on current contract rates and to negotiate any inequities in the next 30 days.

Work Week:

36 cumulative hour week, 1½ after 6 hours, minimum call 6 hours, first week of employment. Applies only to off production employees. If we find this is a hardship we can come back and see if we can solve the matter in some other way.

Contract for two years. If living costs go up 5% or more between July 1st and December 31st, 1946, unions may demand renegotiation of wages only.

Bureau of Labor Statistics for local area to be the authority.

All crafts going back to work Wednesday a.m. July 3, 1946, without discrimination.

(signed) Pat Casey
(signed) Herb Sorrell

Wage Scales, Hours of Employment and Working Conditions

I. Studio Minimum Wage Scale

1.

"A" United Brotherhood of Carpenters and Joiners of America
Studio Local No. 946

		Studio Rates	
		Schedule A*	Schedule C
No.	Classification	Daily	Weekly
		6 hours	"On Call"
	For those employees associated with organizations of or performing the duties of Journeymen, Carpenters, Woodworking Machine Men and Woodturners	1½ after 6 Min. call** 6 hours	
		Per Hour	Per Week
A-1	Construction and/or Maintenance Foreman	2.68½	165.25
A-2	Construction and/or Maintenance Gang Boss	2.56	
A-3	Journeyman and/or Maintenance Carpenter	2.25	
A-4	Apprentice Carpenter—1st year	1.49	
A-5	Apprentice Carpenter—2nd year	1.57	
A-6	Apprentice Carpenter—3rd year	1.75	
A-7	Apprentice Carpenter—4th year	2.01	
A-8	Standby or Keyman	2.25	

*Schedule A off production employees are guaranteed a minimum employment of 36 hours within 6 consecutive days (excluding Sundays and Holidays) starting with the day of employment. After this minimum guarantee of hours has been fulfilled, employment may be continued on a daily basis until termination. Subsequent employment is subject to another minimum guarantee of 36 hours as above. Overtime hours (including Sundays, Holidays and Golden Hours) may be included in fulfilling the minimum guarantee of employment.

**Minimum call for A-1 and A-2 shall be 6½ hours for overlapping shifts.

2. Night Rates (Except for "on call" employees)—

   a) Employees called to work between 6:00 a.m. and 8:00 p.m. shall receive a 10% premium for all time worked between 6:00 p.m. and 6:00 a.m.

   b) Employees called to work between 8:00 p.m. and 4:00 a.m. shall receive a 50% premium for all time worked.

   c) Employees called to work between 4:00 a.m. and 6:00 a.m. shall receive a 50% premium for all time worked until 6:00 a.m., and straight time for the remainder of the minimum call.

3. Studio wage scales shall prevail on all locations.

4. Present working conditions unless modified herein, to remain in effect. (Distant Location working conditions to be negotiated.)

5. New wage rates and guarantees of employment to be established effective July 15, 1946.

6. Retroactive pay based on new wage rates to be computed and paid from January 1, 1946. (New guarantees of employment, and new night rates are not retroactive.)

APPENDIX "D."

[Exhibit "D", R. 42.]

Chicago, Illinois
December 26, 1945

In conformity with the Executive Council directive handed down during the Cincinnati meeting, October 15-24, 1945, the special committee arrived in Hollywood, California, early in December. The directive carried specific instructions, reading:

"International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada—Brotherhood of Painters, Decorators and Paperhangers of America—United Brotherhood of Carpenters and Joiners of America, Etcetera.

"Hollywood Studio Union Strike and Jurisdiction Controversy:

1. The Council directs that the Hollywood strike be terminated immediately.
2. That all employees return to work immediately.
3. That for a period of thirty days the International Unions affected make every attempt to settle the jurisdictional questions involved in the dispute.
4. That after the expiration of thirty days a committee of three members of the Executive Council of the American Federation of Labor shall investigate and determine within thirty days all jurisdictional questions still involved.
5. That all parties concerned, the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States

and Canada, the United Brotherhood of Carpenters and Joiners of America, the International Association of Machinists, the United Association of Plumbers and Steam Fitters of the United States and Canada, the Brotherhood of Painters, Decorators and Paperhangers of America, the International Brotherhood of Electrical Workers of America, and the Building Service Employees' International Union, accept as final and binding such decisions and determinations as the Executive Council committee of three may finally render."

All parties agreed to accept the decision of the committee and to be bound thereby. Through committee arrangements made prior to arrival, all organizations involved in the dispute participated in the intial meeting held Monday, December 3, 1945. A definite method of procedure was agreed upon and there was unanimity of opinion on the plan established.

Exhaustive hearings were conducted by the committee and a complete transcript, together with various exhibits were included in the record. Representatives of the Unions involved adhered to the following schedule:

Tuesday morning, December 4, 1945—Brotherhood of Painters, Decorators and Paperhangers of America.

Tuesday afternoon, December 4, 1945—International Brotherhood of Electrical Workers of America.

Wednesday morning, December 5, 1945—United Association of Plumbers and Steam Fitters of the United States and Canada.

Wednesday afternoon, December 5, 1945—Building Service Employees' International Union.

Thursday morning, December 6, 1945—International Association of Machinists.

Thursday afternoon, December 6, 1945—United Brotherhood of Carpenters and Joiners of America.

Friday, December 7 and Saturday afternoon, December 8, 1945—International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada.

On Saturday morning, December 8, the committee, along with one representative of each International Union listed in the Executive Council directive, visited the Paramount Studios in Hollywood. The committee investigated and inspected all phases of the work jurisdiction in dispute through questioning the participants and reviewing completed work and items in the process of development.

The investigation revealed that a large portion of the work has been in dispute over a long period of years. Records supplied from the files of the American Federation of Labor, including numerous agreements previously entered into, were made the subject of committee examination and study.

A number of International Unions not included in the Executive Council's directive requested permission to set forth their jurisdictional claims in the Motion Picture Industry. All such requests were denied and only those Unions listed in the original directive were included in the committee explorations and findings.

An analysis disclosed that three possible methods of solution could be utilized, *i. e.*,

(a) Strict adherence to craft or vertical lines of demarcation in the motion picture studios.

(b) Establishment of an industrial or horizontal union throughout the industry.

(c) A division of work designations within the industry patterned after previous agreements, negotiated mutually by the various crafts.

After careful and thorough study the committee unanimously agreed that the latter plan is unquestionably the best method of approach. It is the committee's considered opinion that such procedure affords the only plausible solution to a most difficult and complex problem.

Accordingly, this decision is based on that premise and the below listed conclusions are final and binding on all parties concerned:

* * * * * * * *

6. United Brotherhood of Carpenters and Joiners of America:

The committee rules that the division of work agreement entered into between the United Brotherhood of Carpenters and Joiners of America and the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada on February 5, 1925, and

known as the "1926 Agreement" be placed in full force and effect immediately.

Division of work by the United Brotherhood of Carpenters and Joiners of America:

Section 1. All trim and mill work on sets and stages.

Section 2. All mill work and carpenter work in connection with studios.

Section 3. All work in carpenter shops.

Section 4. All permanent construction.

Section 5. All construction work on exterior sets.

Division of work by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada:

Section 6. Miniature sets.

Section 7. Property building.

Section 8. Erection of sets on stages except as provided in Section 1.

Section 9. Wrecking all sets, exterior and interior.

Section 10. Erecting platforms for lamp operators and camera men on stages.

This decision is applicable to the Motion Picture Industry and none other, and is not to be construed as interfering with or disrupting any jurisdiction otherwise granted the United Brotherhood of Carpenters and Joiners of America by the American Federation of Labor.

7. INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA.

The committee rules that the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada has jurisdiction over all work specifically designated and defined in the foregoing work divisions. It is understood, however, that such designation or definition shall in no wise affect jurisdictional grants awarded any National or International Union affiliated with the American Federation of Labor other than those to whom this decision is specifically made applicable.

This decision is applicable to the Motion Picture Industry and none other, and is not to be construed as interfering with or disrupting any jurisdiction otherwise granted the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada by the American Federation of Labor.

Signed:

FELIX H. KNIGHT, Chairman
W. C. BIRTHRIGHT,
W. C. DOHERTY,
Executive Council Committee of the American Federation of Labor.

APPENDIX "E."

[Exhibit "F", R. 57.]

Chicago, Illinois
August 16, 1946

Pursuant to instructions handed down by the Executive Council at its session held on August 15, 1946, the Hollywood Jurisdictional Committee reviewed the work division applicable to the United Brotherhood of Carpenters and Joiners of America as set forth in the Committee's decision dated December 26, 1945, and reaffirmed its previous decision.

The Committee took cognizance of the allegations contained in a report submitted to President Green by Organizer Daniel V. Flannagan under date of August 9, 1946. According to a brief embodied therein Studio Carpenters Local 946, U. B. of C. & J. of A., alleges that certain violations have taken place whereby the carpenters jurisdiction set forth in the directive has been encroached upon.

Jurisdiction over the erection of sets on stages was awarded to the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada under the provisions set forth in Section 8 of the decision which specifically excluded trim and mill work on said sets and stages. The word erection is construed to mean assemblage and such sets on stages or locations. It is to be clearly understood that the Committee recognizes the jurisdiction over construction work

on such sets as coming within the purview of the United Brotherhood of Carpenters and Joiners jurisdiction.

Sections 2 to 5, inclusive, recognized the rightful jurisdiction of the United Brotherhood of Carpenters and Joiners of America on all mill work and carpenter work in connection with studios, all work in carpenter shops, all permanent construction and all construction work on exterior sets.

In view of the alleged violations, the Committee hereby directs that all participants in the Hollywood Motion Picture Studio dispute strictly adhere to the provisions of the directive handed down on December 26, 1945.

(Signed)

FELIX KNIGHT
W. C. BIRTHRIGHT
W. C. DOHERTY.

APPENDIX "F."

Second Cause of Action. [R. 22.]

I.

Refer to Paragraphs I to XXXV, inclusive, of the First Cause of Action herein and incorporate herein each and every allegation of said Paragraphs as if realleged in full herein.

II.

Commencing on or about November 1, 1944, when Carpenters Union undertook to open negotiations to replace a contract with defendant Motion Picture Companies expiring on December 31, 1944, and continuing until the present time, defendants Walsh, Brewer, I.A.T.S.E., John Doe I, II, III, IV and V, Jane Doe I, Jane Doe II, and defendants Motion Picture Companies, Producers Association, John Doe I Association, and John Doe II Association, conspired each with the other, and continue to so conspire, to deprive plaintiffs of having and exercising, and to injure plaintiffs in their persons and property in the exercise of, rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States, in that said defendants conspired and continue to conspire each with the other to deprive plaintiffs of the right and privilege to work at their chosen vocations, to-wit: studio carpenters, and to interfere with, obstruct, impede, and hinder said plaintiffs in the free and unhampered exercise of said right and privilege; that said conspiracy has resulted and continues to result in great damages to plaintiffs in the loss of wages.

III.

In furtherance of said conspiracy, on April 10, 1945, defendants Walsh and I.A.T.S.E. chartered a local union of I.A.T.S.E., designating it Carpenters Local No. 787, for the purpose of providing strikebreakers through said charter to impede, interfere with, obstruct, hinder and defeat plaintiffs in the free exercise of the aforesaid rights and privileges, injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States.

IV.

In furtherance of said conspiracy, and with the object of injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States, on April 14, 1945, defendant Walsh directed a letter to members of the Carpenters Union, and other unions, in part as follows:

> "First of all, I want you to know that the International Alliance has reached an agreement with the Producers Association by which the I.A.T.S.E. will supply all labor to the studios, not only in our crafts which were recognized before the strike, but also in those classifications which have been vacated by the striking unions. The I. A. assumed this responsibility only after we were certain that it was impossible to reach an honorable settlement with those persons who are conducting this strike against the I.A.T.S.E.
>
> "On Tuesday night of this week a Carpenter's Local was chartered and is now known as Local No. 787 of the I.A.T.S.E. On Thursday night, the Motion

Picture Studio Painters, Local No. 788 of the I.A.T.S.E. was chartered. In addition to these Locals, there will be a local charter for Machinists, and if necessary for other crafts. We are proceeding in accordance with our agreement with the Producers to man the studios.

"As the International President of the I.A.T.S.E., I assure you that having assumed this jurisdiction, we will stake the entire strength of the International Alliance on our efforts to retain it."

The full text of said letter is attached hereto as Exhibit "H" and incorporated herein by reference.

V.

In furtherance of said conspiracy, and by "agreement with the Producers Association," and "proceeding in accordance with our agreement with the Producers to man the studios," as stated in the aforesaid letter of April 14, 1945, and with the object of injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States, defendants Walsh, Brewer and I.A.T.S.E. did from March 12, 1945, and until on or about November 1, 1945, provide strikebreakers to defendant Motion Picture Companies, and said companies did wrongfully and without cause discharge members of Carpenters Union from their employment and did employ said strikebreakers to do carpenter work in the place of members of said Carpenters Union so discharged.

VI.

In furtherance of said conspiracy, defendants Walsh and I.A.T.S.E. did on or about November 1, 1945, create and charter Set Erectors Local No. 468 of defendant I.A.T.S.E. and did issue "Emergency Working Cards" and "Permits to Work" to persons not members of said union to perform carpenter services for defendant Motion Picture Companies (see Exhibit "E") and said companies did discharge numerous members of Carpenters Union and did employ for said carpenter work persons so supplied to them by said Local No. 468 of defendant I.A.T.S.E.; that to date approximately twelve hundred of said Carpenters Union have been so discharged.

VII.

In furtherance of said conspiracy, defendant Walsh on August 31, 1946 directed a letter to defendant Producers Association, saying in part:

> "It is the contention of this International Union that this so called 'clarification' was issued without authority and in violation of the Cincinnati Agreement to which this International Alliance, yourselves, and the other International Unions involved, were all parties. The Cincinnati Agreement in making provision for the creation of the three man committee, specifically provided that the parties thereto accept the Committee's decision as final and binding."

The full text of said letter is attached hereto and incorporated herein by reference as Exhibit "I."

VIII.

In furtherance of said conspiracy, defendant Walsh on September 13, 1946, directed a letter to local unions of defendant I.A.T.S.E., in part as follows:

> "That no other organization shall be permitted, directly or indirectly to infringe upon the jurisdiction of the I.A.T.S.E. or its Local Unions in the Hollywood Studios; and that the employment of the members thereof shall not be interfered with or adversely affected."

The full text of said letter is attached hereto and incorporated herein by reference as Exhibit "J."

WHEREFORE, plaintiffs pray judgment of this Court declaring their rights as follows:

I. That plaintiffs have the right and privilege as citizens of the United States to work at their chosen vocations free from deprivation or injury by defendants and each of them, acting individually or in conspiracy with each other, or by and through their agents or officers;

II. That the Decision, Findings and Award of the Executive Committee of the American Federation of Labor of December 26, 1945, as clarified on August 16, 1946, is binding on all defendants herein;

III. That plaintiffs have the right, free from deprivation or injury by defendants, and each of them, acting individually or in conspiracy with each other,

or by and through agents or officers, to perform that work specified in the American Federation of Labor Decision, Findings, and Award of December 26, 1945, as clarified by the directive of August 16, 1946;

IV. That the term "erection of sets on stages" as used in said award does not include any "set construction" but means "assemblage of such sets on stages" as stated in the directive of August 16, 1946;

V. That plaintiffs have the right to do any and all carpenter work in connection with the studios;

VI. That the agreement of July 2, 1946, is binding on the defendants party thereto.

VII. That plaintiffs have the right to work for defendant Motion Picture Companies under the rates of pay, terms, and conditions of the agreement of July 2, 1946, free from deprivation or injury by defendants and each of them, acting individually or in conspiracy with each other, or by their agents or officers.

And such further relief as the Court deems proper.

APPENDIX "G."

August 31, 1946

Association of Motion Picture Producers, Inc.
5504 Hollywood Boulevard
Hollywood 28, California

Gentlemen:

I have received from President Green of the American Federation of Labor a communication inclosing a copy of a statement described as "clarification" of the decision in the Hollywood jurisdictional dispute, made by Vice-Presidents Knight, Birthright and Doherty, dated December 26, 1945.

It is the contention of this International Union that this so-called "clarification" was issued without authority and in violation of the Cincinnati Agreement to which this International Alliance, yourselves, and the other International Unions involved, were all parties. The Cincinnati Agreement in making provision for the creation of the three man committee, specifically provided that the parties thereto accept the Committee's decision as final and binding.

If the Committee's decision as originally rendered is not fully complied with by you this International Alliance will take such action as may be necessary to protect its interests.

Yours very truly,

RICHARD F. WALSH (signed)
International President.

SUBJECT INDEX

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IN THE

Supreme Court of the United States

October Term, 1947
No. 714

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN K. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. EZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

Petitioners,

vs.

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

Respondents.

Brief of Petitioners in Reply to Answer Briefs of Respondent IATSE, et al., and Respondent Companies, Respectively.

Statement of Case.

In their respective answer briefs, respondents have each given a statement of the case. Respondent IATSE, called Alliance, in its brief (p. 1) quotes the following from the memorandum opinion of the District Judge [R. 122, 70 Fed. Supp. 1008-1009]:

> "The forty-eight page complaint when analyzed presents nothing more or less than a request that this court interpret a private contract or agreement

allocating certain work on stage sets in the moving picture industry. As stated by counsel in oral argument, the difference between the parties is simply who is 'to drive the nails.' The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship."

Which, except for the last sentence, relates to only part of the case.

Respondent further states (p. 4):

"In January, 1946, The Studios, pursuant to the decision of the Three-Man Committee, allocated the work of erecting sets on stages to members of The Alliance, with the result, it is alleged, that Members of Local 946 of the Carpenters who had been doing such work were supplanted [R. 16-17]."

That is, that respondents in their construction and application of said decision, or award, supplanted Carpenters with the IATSE in work that the Carpenters "had been doing" under their long-standing contracts; and

"On August 16, 1946, the Three-Man Committee of the Executive Council of the American Federation of Labor issued a purported 'clarification' of its December 26, 1945, decision on award, in which it was stated 'the word erection is construed to mean assemblage of such sets on stages or locations.' "

That is, the Arbitration Committee stated its original intention in said decision, or award, to correct the said misconstruction and misapplication thereof made by respondents; and

"If the terms of this 'clarification' were put into effect by The Studios, it would mean that the work of erection of sets on stages, being performed by

members of The Alliance, would be taken away from them and given to members of Local 946 of the Carpenters."

That is, the Arbitration Committee's said clarification would simply restore to the Carpenters the work that had always belonged to them, and that they had been doing, under their contracts, but that had been taken from them by respondents' said misconstruction and misapplication of said December 26, 1945 decision or award.

The Other Carpenters.

Attention is called, however, to the fact that respondent's quotation from the District Court's memorandum opinion, and the opinion itself, refer only to those of the Carpenter employees concerned with set construction. Other Carpenters were covered by the contract between the Carpenters Local 946, and the respondent Companies, and between the Carpenters and the IATSE. Paragraph XXVI of the complaint [R. 17] deals with the dismissal of "approximately twelve hundred carpenters from said employment" including those doing other types of carpenter work in the studios, who were dismissed after the IATSE Exhibit "I" letter of August 31, 1946, repudiating the clarification [R. 65]:

"XXVI. Thereafter and continuing to the present time, defendants Motion Picture Companies have refused to employ plaintiffs and the class for which they sue at the work prescribed by the aforesaid decision and award, but in said time have discharged

> approximately twelve hundred carpenters from said employment and have engaged members of defendant I.A.T.S.E. and persons not members thereof but issued 'Permit to Work' and 'Emergency Working Cards' by defendant officers and of said union to do the work awarded by the aforesaid decision to plaintiffs, in violation of the agreements of said companies hereinbefore alleged."

The dismissal of all Carpenters was in furtherance of the conspiracy between respondent Companies, and respondent IATSE, as alleged in the second cause of action [R. 22-27; Pet. App. 74-79].

The Issue.

The last sentence in respondent's quotation from the memorandum opinion of the District Court correctly states the issue:

> "The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship."

It has been shown in the brief supporting the petition, to which reference is made to avoid repetition, that the Court had, and has, jurisdiction because this case arises under the Constitution and laws of the United States, and also because of the additional jurisdiction since conferred by Section 301 of the Labor-Management Relations Act of 1947.

POINT I.

Jurisdiction Under Fifth Amendment.

Reference is made to Point I in petitioners' opening brief (pp. 17-21), and particularly to petitioners' language therein that the Court had, and has, jurisdiction without diversity of citizenship:

> "*If* the Fifth Amendment and related laws guarantee the civil right to work under contracts, and to negotiate under the terms thereof, in accordance with Section 7 of the National Labor Relations Act, as amended, free from conspiracy and interference by private parties,"

Respondent Companies' Point I answer thereto (pp. 3-4) cites *Corrigan v. Buckley,* 271 U. S. 323, 330, *Talton v. Mayes,* 163 U. S. 376, 382, which are accepted as general statements of the law in the light of their day and time, before this era of federal laws in labor-management relations.

Respondent IATSE's Point III answer thereto (pp. 17-25) cites additional cases, including *Love v. U. S.,* 108 F. (2d) 43, 44-46, and italicizes the following quotation therefrom (pp. 23-24):

> "But such determination has always been rested upon the interpretation and application of the provisions of the constitution and federal enactments. It cannot be predicated upon any judicial concept concerning an able-bodied, competent and willing man's natural or inherent right to work. Unless a legal right has been defined and conferred by legislative authority, no justiciable controversy is present. The principles applicable are the same in the field of

> government work as in the broader field of private enterprise. The right to work at a particular employment must be shown to have become vested by law in the person asserting it."

Petitioners' contractual right to work, and contractual right to continue collective bargaining, have been shown to have become vested by law, to-wit: Section 7 of the NLRA. Their long-standing contracts include the present written "interim agreement" between their union and the respondent Motion Picture Companies (Pet. 4-6), covering:

1. A "contract for two years" [R. 32; App. C, 63];

2. "Wage scales, hours of employment and working conditions" [R. 33; App. C, 64];

3. Employment in its provisions for "all crafts going back to work on Wednesday a. m. July 3, 1946". [R. 34; App. C, 63], and in the work of the Carpenters thereunder; and

4. An agreement to bargain collectively under Section 7 of the NLRA, as now amended [R. 28, 29].

Emphasis is given this agreement to negotiate and bargain by its mention three times in the present "interim agreement." The caption says:

> "* * * agreements reached and effective pending the formal signing of contracts" (Pet. 59).

The body of the minutes, adopted as an "interim agreement," says:

> "An interim agreement will be entered into pending drawing up formal agreements" (Pet. 60).

The attached letter from the Chairman of the Producers Committee to the Conference of Studio Unions says:

> "Pending the completion of contracts between the individual unions, members of the C. S. U., and the major studios, these Minutes (copy attached herewith) shall constitute an Interim Agreement" (Pet. 59).

There is no question of petitioners' property rights under the Fifth Amendment (Pet. 18-21).

If the Court considers that the guaranties of the Fifth Amendment apply to petitioners' contractual right to work, and to their contractual right to continue bargaining collectively, both under Section 7 of the NLRA, then it is respectfully submitted that the Court has jurisdiction under this point.

POINTS II and III.

Jurisdiction Under Judicial Code Section 24(1)(8); Under Point II Because This Case Arises Under the National Labor Relations Act, as Reenacted in Labor-Management Relations Act of 1947; and, Under Point III to Enforce the Award of the A. F. of L. Arbitration Committee.

Reference is made to Points II and III in the petitioners' opening brief (pp. 22-27, 27-30).

Re Answer of Respondent Companies.

Respondent's view, in answer to Point II is threefold (p. 4):

> 1. "Violation of collective bargaining agreements is not prohibited by the National Labor Relations Act. The Act does not even require that employers or unions enter into collective bargaining contracts, much less that they perform them when made."

which is an obsolete view in the developments and problems of labor-management relations, and which is also in conflict with *Marbury v. Madison,* 1 Cranch, 137 (Pet. 21).

> 2. "Even if the acts of the Motion Picture Companies which are claimed to be violative of the collective bargaining agreements were also violative of rights of the Petitioners which were protected by the National Labor Relations Act, still, the District Court would not have jurisdiction to declare that the Act had been violated."

which is also obsolete if laws for collective bargaining are to have any force or effect, or are to meet the requirements of our national economy.

> 3. "Under Section 10(a) of the Act as it existed at the time this action was dismissed by the District

> Court, the National Labor Relations Board had exclusive jurisdiction over unfair labor practices."

which has no bearing upon this case, where the Court is only asked to interpret the contract, as was done in *Oil Workers International Union, Local 463, etc. v. Texoma Natural Gas Company,* 146 F. (2d) (Pet. 38-40), and as was prayed in *Loew's Incorporated v. Basson,* 46 F. Supp. 66 (Pet. 37-40).

Furthermore, attention is called to the rule stated in *California State Brewers Institute v. International Brotherhood of Teamsters, et al.* etc., 19 F. Supp. 824 (1), which is cited in petitioners' brief (p. 28), as follows:

> "The two unions here involved are members of the American Federation of Labor. The National Labor Relations Board, in all cases which have arisen concerning jurisdictional disputes between members of the same labor organization, has held that such dispute must be decided by that labor organization itself. This court holds that the National Labor Relations Board has, in this respect, properly interpreted the act."

This accepted ruling of the Labor Board, that it is without jurisdiction between two unions belonging to the A. F. of L., is applicable here, where the A. F. of L. set up its Arbitration Committee under an agreement between the carpenters Brotherhood, Local 946, the respondent IATSE, and the respondent Companies, and where this A. F. of L. Board rendered its award, and clarification, set forth in the petition and opening brief (pp. 6-8, 28-30).

Upon the rendition of said award by the A. F. of L. Committee, and of its clarification to express the original intent thereof, the administrative procedure was exhausted. There was no where to go, in following up the arbitration award to make it effective, except to the courts, as has been done in this case.

The appearance in and consent to this proceeding, filed by the Brotherhood of Carpenters, stands to the very great credit of that outstanding labor organization [R. 68], as follows:

> "Comes now the United Brotherhood of Carpenters & Joiners of America, named as defendant herein, and by its counsel enters its appearance herein as to both the original and amended complaints on file herein, and does not contest the granting of the prayer of plaintiffs' amended complaint."

Re Answer of Respondent IATSE.

Respondent IATSE answers Points II and III under its Points I and II (pp. 1-7, 8-16), with reasoning similar to that advanced by the respondent Companies.

Reply to All Respondents.

It is submitted that the Court has jurisdiction:

1. Under Point II to construe the contracts by declaratory judgment; and

2. Under Point III to construe and act upon the A. F. of L. award and clarification; so as to determine the rights and responsibilities of the parties thereunder.

POINT IV.

Jurisdiction Under Remedial Section 301(a) of the Labor-Management Relations Act of 1947.

Reference is made to petitioners' opening brief (pp. 31-34), and to respondent Companies' Point IV in answer thereto (pp. 7-8), where respondent contends:

1. That the phrase in said section "may be brought" bars pending actions. This is in conflict with the intention of Congress, as expressed in the House debate, and shown in Appendix "G" hereto attached, and made a part hereof; and

2. That said section should be construed as restricted to "actions between a labor organization and an employer," or between two labor organizations. No such restriction can be reasonably placed upon the language in the section, providing that

> "Suits for violation of contracts," between an employer and a labor organization, or between such labor organization, "may be brought in any district court" etc.

The section refers to "contracts between" and not to "suits between" an employer and a labor organization, or between such labor organizations.

Reference is also made to respondent IATSE's Point V (pp. 27-28) to the same general effect as the said contention of respondent Companies.

It is respectfully submitted, as shown by Appendix "G" attached hereto, that Section 301(a) was enacted

to meet just such situations as the conspiring respondents have here brought upon the locked out Carpenters of Hollywood, and against the general welfare of the public at large.

Attention is called to the illuminating remarks, of both Representative Barden and Representative Case, and to the clear statement of Chairman Hartley, in said Appendix "G" as attached hereto.

POINT V.

Petitioners' Point V upon the Court's jurisdiction in this case for declaratory relief only, where the Court has original jurisdiction, is not seriously questioned by respondent Companies' Point V (p. 9), nor by respondent IATSE's Point IV (p. 26).

POINT VI.

Petitioners' Point VI upon the applicability of the Declaratory Judgments Act, to reconcile the conflict in principle between the decision in this case and decisions in other District and Circuit Courts, is not answered by either respondent.

Conclusion.

In conclusion it is respectfully requested that the Court consider:

1. The need for stability based upon respect for contracts, and law and order, in labor-management relations;

2. The points and authorities in petitioners' opening brief upon the jurisdiction of federal courts to uphold federal enactments;

3. The availability of the Declaratory Judgments Act to prevent unnecessary, and unjustified labor-management conflicts as use has been made of this remedy, and as its worth has been shown in *Loew's Incorporated v. Basson, et al.,* 46 F. Supp. 66, and *Oil Workers International Union, et al. v. Texoma Natural Gas Co.,* 146 F. (2d) 62, cited and quoted in petitioners' opening brief; and

4. That declaratory relief offers a solution to present-day problems, where contracts are willfully disregarded, free from the sting of injunction.

Respectfully submitted,

ZACH LAMAR COBB,
Attorney for Petitioners.

APPENDIX "G."

Congressional Record, April 17, 1947, Page 3334.
H. R. 3020, Labor Bill, Section 302(a).

Re Legislative History on Court Jurisdiction for Declaratory Relief in Labor Jurisdictional Disputes arising after Collective Bargaining Contracts and/or Arbitration Awards.

Mr. Barden: Mr. Chairman, a parliamentary inquiry.

The Chairman: The gentleman will state it.

Mr. Barden: Do I understand the Clerk has completed reading section 302?

The Chairman: The gentleman is correct.

Mr. Barden: Mr. Chairman, I move to strike out the last word.

The Chairman: The gentleman from North Carolina is recognized for 5 minutes.

Mr. Barden: Mr. Chairman, I take this time for the purpose of asking the Chairman a question, and in asking the question I want it understood that it is intended to make a part of the record that may hereafter be referred to as history of the legislation.

It is my understanding that section 302, the section dealing with equal responsibility under collective bargaining contracts in strike actions and proceedings in district courts contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in other words, proceedings could, for example, be brought by the employers, the labor organizations, or interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract.

Mr. Hartley: The interpretation the gentleman has just given of that section is absolutely correct.

Mr. Case of South Dakota: Mr. Chairman, will the gentleman yield?

Mr. Barden: I yield.

Mr. Case of South Dakota: Would the gentleman and the Chairman agree that that also includes declaratory judgments in the case of jurisdictional disputes?

Mr. Barden: I would so understand it.

Mr. Case of South Dakota: I would like to have that in the record also because declaratory judgments is a proceedings which has been adopted in the case of jurisdictional disputes.

Mr. Barden: I think the language is clear, but I want to make it certain.

Mr. Case of South Dakota: That is involved, and I refer to declaratory judgments. It is involved in the case of the motion picture players of California and I think we can strengthen the hands of those who are trying to get that matter straightened out.

Mr. Barden: It will minimize lawsuits and cut down the length of these controversies. That is the purpose of it.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947
No. 714

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated, *Petitioners,*

vs.

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*, *Respondents.*

Brief of Respondents the International Alliance, etc., and Roy M. Brewer in Opposition to Petition for a Writ of Certiorari.

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Petitioners,

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THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

Respondents.

Brief of Respondents the International Alliance, etc., and Roy M. Brewer in Opposition to Petition for a Writ of Certiorari.

Statement of the Case.

Judge Ben Harrison, in his Memorandum of Opinion [R. 122, 70 Fed. Supp. 1008-1009], correctly and succinctly stated the issue presented to the District Court below as follows:

> "The forty-eight page complaint when analyzed presents nothing more or less than a request that this

court interpret a private contract or agreement allocating certain work on stage sets in the moving picture industry. As stated by counsel in oral argument, the difference between the parties is simply who is 'to drive the nails.' The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship."

The labor organizations involved in this litigation, with the exception of defendant Conference of Studio Unions, hereinafter called CSU, are affiliated with the American Federation of Labor [R. 8]. Petitioners and the persons whom they purport to represent are members of the United Brotherhood of Carpenters and Joiners of America, hereinafter referred to as Carpenters. Defendant CSU is an organization of local unions of various crafts comprising members employed, during periods referred to in the complaint, by the motion picture industry in Hollywood, and among its members are Local 946 of the Carpenters [R. 5] and Local 1421 of Brotherhood of Painters, Decorators and Paperhangers of America, hereinafter called the Painters [R. 73-76].

Respondent The International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, sometimes referred to in the record herein as the Stagehands, but hereinafter called The Alliance, a voluntary unincorporated association, is an international labor union having approximately 800 constitutent locals, 14 of which, with a membership in excess of 15,000, being situated in the Hollywood area, and all of the members of said last mentioned locals are employed by respondents Motion Picture Companies, hereinafter called The Studios, in the production of motion picture films [R. 4, 72-73]. Respondent Roy M. Brewer

is International Representative of The Alliance. Neither The Alliance nor any of its constituent locals are members of CSU [R. 75].

On March 12, 1945, Local 1421, situated in Hollywood and chartered by the Painters, with members then working in The Studios, declared a strike as a result of a jurisdictional controversy between it and The Alliance as to which organization had jurisdiction over a small group of Set Decorators employed in The Studios [R. 62-63]. The various labor organizations constituting the membership of CSU joined Local 1421 in this strike; The Alliance took the position that the strike, while ostensibly against The Studios, was actually a jurisdictional strike against The Alliance and that it constituted an attempt on the part of Local 946 of the Carpenters and other labor organizations, members of CSU, to obtain jurisdiction over certain work classifications which The Alliance believed properly belonged to it. As a result, members of The Alliance continued their work in The Studios and same were thus enabled to remain open [R. 61, 76-77].

In October, 1945, while the strike was in progress, all of the interested labor organizations, The Studios, and the Executive Council of the American Federation of Labor, entered into an agreement, known as the Cincinnati Agreement, by which it was provided that the strike be terminated and all employees return to work immediately, that for a period of thirty days the international unions affected make every attempt to settle the jurisdictional questions involved in the dispute, and "that after the expiration of thirty days a committee of three members of the Executive Council of the American Federation of Labor shall investigate and determine within thirty days all jurisdictional questions still involved." It was further pro-

vided "that all parties concerned . . . accept as final and binding such decisions and determinations as the Executive Council committee of three may finally render," and that "all parties agreed to accept the decision of the committee and to be bound thereby." [R. 42, 43.]

At the end of the first thirty-day period provided for in the Cincinnati Agreement, certain jurisdictional disputes remained unresolved. The committee of three members of the Executive Council of the American Federation of Labor held hearings and on December 26, 1945, rendered its decision. By this decision jurisdiction over "erection of sets on stages" was allocated to The Alliance [R. 54-55] and jurisdiction over "all trim and mill-work on sets and stages" was allocated to the Carpenters [R. 15, 54]. In January, 1946, The Studios, pursuant to the decision of the Three-Man Committee, allocated the work of erecting sets on stages to members of The Alliance, with the result, it is alleged, that members of Local 946 of the Carpenters who had been doing such work were supplanted [R. 16-17]. On August 16, 1946, the Three-Man Committee of the Executive Council of the American Federation of Labor issued a purported "clarification" of its December 26, 1945, decision, in which it was stated "the word erection is construed to mean assemblage of such sets on stages or locations." [R. 18.] If the terms of this "clarification" were put into effect by The Studios, it would mean that the work of erection of sets on stages, being performed by members of The Alliance, would be taken away from them and given to members of Local

946 of the Carpenters. The Alliance contended that "the so-called 'clarification' was issued without authority and in violation of the Cincinnati Agreement" to which The Alliance, The Studios, and the other International Unions involved were all parties, pointing out that "the Cincinnati Agreement in making provision for the creation of the three man committee, specifically provided that the parties thereto accept the Committee's decision as final and binding." [R. 25-26.] The Studios concurred with the position so taken by The Alliance [R. 16]. On September 26, 1946, Local 946 of the Carpenters declared a strike against all of the major Studios, which strike was for the purpose of compelling The Studios to recognize as valid and binding the so-called "clarification" and take away from The Alliance jurisdiction over the erection of sets and grant such jurisdiction to said Local 946. Such strike at the time this action was instituted was still in progress, and such of the petitioners, and those whom they purport to represent, who were working for the major Studios, all of whom are members of said Local 946, joined therein.

It is the contention of The Alliance that the decision of the Three-Man Committee rendered on December 26, 1945, is valid and binding on all parties and that the so-called "clarification" is invalid and a nullity, whereas petitioners, and the persons whom they purport to represent, contend that the December 26, 1945, decision has been superseded by the so-called "clarification." As the District Judge well said:

> "Thus, we have an action in which private individuals ask this court to construe their rights under

> a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other." [R. 122-123.]

and

> "The only important issue in the case at bar is the interpretation of a contract. The meaning of this contract is not dependent on the National Labor Relations Act, whether it owes its existence to that Act or not. A decision by this Court that the Carpenters or the Stagehands, as the case may be, have the right to construct stage sets would not involve consideration of the validity, construction, or effect of the Act. The decision would be based purely and simply upon contractual principles. Therefore, this suit does not arise under the Constitution or laws of the United States, and this Court lacks jurisdiction." [R. 127-128.]

It thus appears that the sole controversy presented to the District Court below was a jurisdictional dispute between two labor organizations arising out of a series of contracts, awards, and decisions, with respect to which petitioners sought declaratory relief. It is conceded by petitioners and affirmatively appears from the amended complaint that diversity of citizenship does not exist.

ARGUMENT.

I.

A Case Does Not Arise "Under the Constitution or Laws of the United States" Unless It Involves a Real and Substantial Dispute Respecting the Validity, Construction, or Effect of the Constitution or Such Laws, Upon the Determination of Which the Result Depends.

Shulthis v. McDougal, 225 U. S. 561, 569, 56 L. Ed. 1205, 1211:

> "A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends."

Gully v. First National Bank, 299 U. S. 109, 112, 81 L. Ed. 70, 72:

> "How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. (Citing cases.) *The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another.*"

The District Court, recognizing and applying the foregoing rule, held adversely to the contention of petitioners that the controversy set forth in amended complaint arose "under the Constitution or laws of the United States."

II.

District Courts of the United States, in the Absence of Diversity of Citizenship, Do Not Have Jurisdiction to Adjudicate, in Private Suits Between Individuals, Contractual Rights or Jurisdictional Controversies Between Competing Labor Organizations; Such Controversies Do Not "Arise" Under the National Labor Relations Act, nor Under "Any Law Regulating Commerce."

Compelling authority to the effect that an action for declaratory judgment as to rights under a contract executed as a result of negotiations under the National Labor Relations Act is not an action arising under any Federal statute may be found in the decisions of this Court relating to actions brought for declaratory relief with respect to contracts negotiated pursuant to the provisions of the Railway Labor Act. Decisions under the Railway Labor Act are clearly in point because that Act, like the National Labor Relations Act, requires that negotiations be had for the purpose of arriving at a contract. Section 7 of the National Labor Relations Act (U. S. C. A., Title 29, Sec. 157) may be compared, as follows, with Section 4, Railway Labor Act (U. S. C. A., Title 45, Sec. 152):

National Labor Relations Act, Section 7 (U. S. C. A., Title 29, Sec. 157):

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Railway Labor Act, Section Fourth (U. S. C. A., Title 45, Sec. 152):

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. . . ."

In *General Committee, etc., v. Southern Pacific Co.*, 320 U. S. 338, 88 L. Ed. 85, this Court, at pages 87 and 88 of 88 L. Ed., and at pages 343 and 344 of 320 U. S., has this to say concerning jurisdictional controversies between competing labor unions:

> "We are concerned only with a problem of representation of employees before the carriers on certain types of grievances which, though affecting individuals, present a dispute like the one at issue in the Missouri-Kansas-Texas R. Co. Case. *It involves, that is to say, a jurisdictional controversy between two unions.*[1] It raises the question whether one collective bargaining agent or the other is the proper representative for the presentation of certain claims to the employer. *It involves a determination of the point where the exclusive jurisdiction of one craft ends and where the authority of another craft begins. For the reasons stated in our opinions in the Missouri-Kansas-Texas R. Co. Case and in the Switchmen's Union of N. A. Case, we believe that Congress left the so-called jurisdictional controversies between unions to agencies or tribunals other than the courts. We see no reason for differentiating this jurisdictional dispute from the others.*"

In *General Committee, etc., v. Missouri-K.-T. R. Co.* 320 U. S. 323, 88 L. Ed. 76, this Court, at pages 83 and 84 of 88 L. Ed., and at pages 336 and 337 of 320 U. S., stated:

> "It is true that the present controversy grows out of an application of the principles of collective bargaining and majority rule. *It involves a jurisdic-*

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[1]Italics appearing in this brief are ours, unless otherwise indicated.

tional dispute—an asserted overlapping of the interests of two crafts. It necessitates a determination of the point where the authority of one craft ends and the other begins or of the zones where they have joint authority."

In the course of its decision in the last above cited case, this Court, referring to its decision in the *Virginian Ry. Co. Case* (300 U. S. 548, 81 L. Ed. 799) and to the Railway Labor Act, stated:

"But the decision does not imply, as is argued here, that every representation problem arising under the Act, presents a justiciable controversy. *It does not suggest that the respective domains for two or more overlapping crafts should be litigated in the federal district courts.*

"It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts."

* * * * * * * *

"We are here concerned solely with legal rights under this federal Act which are enforcible by courts. For unless such a right is found it is apparent that this is not a suit or proceeding 'arising under any law regulating commerce' over which the District Court had original jurisdiction by reason of Sec. 24(8) of the Judicial Code, 28 USCA Sec. 41(8), 7 FCS Title 28, Sec. 41(8). [Citing cases.] When a court has jurisdiction it has of course 'authority to decide the case either way.' *The Fair v. Kohler Die & Specialty Co.,* 228 U. S. 22, 25, 57 L. ed. 716, 717, 33 S. Ct. 410. But in this case no declaratory decree should have been entered for the benefit of any of the parties. Any decision on the merits would involve the

granting of judicial remedies which Congress chose not to confer."

Petitioners urge that the District Court had jurisdiction on the ground that this action arises under the National Labor Relations Act. (29 U. S. C. A., Sec. 150 *et seq.*) Petitioners rely upon Section 7 of that Act (Sec. 157 of Title 29, U. S. C. A.), which section we have above set forth verbatim.

The complaint herein, however, does not allege any violation of the foregoing section. Even if it be assumed that the complaint did allege such a violation, the District Court would nevertheless be without jurisdiction, for the National Labor Relations Act, as it existed at the time this ligitation was instituted, provided that the National Labor Relations Board should have exclusive power to enforce rights guaranteed by that Act to employees, subject only to review by the proper Circuit Court of Appeals. Thus Section 10(a) of the National Labor Relations Act (29 U. S. C. A., Sec. 160(a)) reads as follows:

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

It is settled, moreover, that rights and obligations of employers and employees under executed labor agreements do not "arise" under the National Labor Relations Act within the meaning of Article III, Section 2, Subdivision 1 of the Federal Constitution, even though such agree-

ments were arrived at in conformity with the provisions of that Act. The Act does not provide for the interpretation or enforcement of agreements, but provides only for negotiations in good faith looking to agreements. Thus, *Blankenship v. Kurfman* (C. C. A. 7), 96 F. (2d) 450, involved an action by members of a union to enjoin another union from interfering with a contract between their union and their employer. With respect to the contention of the plaintiffs therein that federal jurisdiction was present on the ground that the case arose under the provisions of the National Labor Relations Act, the court held as follows:

> "The proposition of the plaintiffs that the effect of the National Labor Relations Act, especially Sections 157 and 159(a) of Title 29, U. S. C. A., is to create a federal right, the violation of which by the defendants entitles plaintiffs to injunctive relief, is untenable.
>
> . . .
>
> "The general purpose of the National Labor Relations Act is to provide methods of preventing or eliminating certain 'unfair practices' which have heretofore characterized the relation of employer and employee, and which have obstructed, or tended to obstruct, the free flow of commerce. The act creates certain rights and duties as between employer and employee and provides the procedure necessary to give effect thereto. *It seems clear that the only rights which are made enforceable by the Act are those which have been determined by the National Labor Relations Board to exist under the facts of each case; and when these rights have been determined, the method of enforcing them which is provided by the Act itself must be followed. And we find no provision in the Act which can be construed as intending to create rights for employees which can be enforced*

in federal courts independently of action by the National Labor Relations Board. Consequently, we hold that the contract in the instant case between the plaintiffs and their employer did not, by force of the National Labor Relations Act, create a right in the plaintiffs which was secured to them 'by the Constitution or laws of the United States.' Consequently, the alleged unlawful interference by the defendants with the plaintiffs' contractual rights did not give a cause of action of which a federal court would have jurisdiction in the absence of diversity of citizenship."

The relative jurisdictions of the Federal Courts and the National Labor Relations Board under the provisions of the National Labor Relations Act are expressed clearly and at length by the United States Court of Appeals for the District of Columbia in *Fur Workers Union etc. v. Fur Workers Union,* 105 F. (2d) 1 at 12 (affirmed in 308 U. S. 522, 84 L. Ed. 443).

Judge Sanborn, speaking for the Circuit Court of Appeals, Eighth Circuit, in *Donnelly Garment Co. v. International Ladies' Garment Workers' Union,* 99 F. (2d) 309 at 315, said:

> "It also seems clear to us that the only jurisdiction conferred by the National Labor Relations Act upon Federal Courts is that conferred upon Circuit Courts of Appeals with respect to enforcing, modifying and setting aside orders of the National Labor Relations Board."

Cases relied upon by petitioners are *Steele v. Louisville and Nashville, etc., R. R.,* 323 U. S. 192, 89 L. Ed. 173 (hereinafter called the *Steele* case), and *Tunstall v. Brotherhood of Locomotive Firemen, etc.,* 323 U. S. 210, 89 L. Ed. 187 (hereinafter called the *Tunstall* case).

Neither of these cases, it is respectfully submitted, even remotely suggests that the District Court had jurisdiction of the controversy disclosed by the amended complaint.

In the *Steele* case, the question presented was stated by the Chief Justice in the opening paragraph of the opinion as follows:

> "The question is whether the Railway Labor Act * * * imposes on a labor organization, acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees, *the duty to represent all the employees in the craft without discrimination because of their race,* and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation."

And in the *Tunstall* case the Chief Justice summarizes the questions involved in the following language:

> "This is a companion case to No. 45, *Steele v. Louisville & N. R. Co.,* decided this day * * * in which we answered in the affirmative a question also presented in this case. The question is whether the Railway Labor Act * * * imposes on a labor organization, acting as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft *without discrimination because of their race.* The further question in this case is whether the federal court has jurisdiction to entertain a *non-diversity* suit in which petitioner, a railway employee subject to the

Act, seeks remedies by injunction and award of damages for the failure of the union bargaining representative of his craft to perform the duty imposed on it by the Act, to represent petitioner and other members of his craft without *discrimination because of race.*"

It is apparent that the controversy in the instant case bears no resemblance to the controversy decided by this Court in the *Steele* and *Tunstall* cases. In the present case, no complaint is made by the petitioners that the Carpenters' Union, their legally constituted bargaining agent under the provisions of the National Labor Relations Act [R. 7-8], is discriminating against them or any minority group because of race, color, or for any other reason. In fact, according to allegations in the amended complaint, the petitioners and those whom they purport to represent are well satisfied with the "contracts, decisions, findings, and awards in arbitration" negotiated for them and on their behalf by their bargaining representative, the Carpenters' Union; there is, moreover, no controversy between the petitioners and any of their fellow members concerning the effectiveness, desirability, or meaning of such "contracts, decisions, findings, and awards in arbitration." The controversy here, is not, as it was in the *Steele* and *Tunstall* cases, inter-racial, but is a controversy between competing unions as to the meaning and application of certain alleged "contracts, decisions, etc." In the instant case, petitioners and those whom they purport to represent seek to have certain "contracts, decisions, etc." inter-

preted as they and all associated with them desire to have them interpreted in order that the Carpenters may have jurisdiction over the erection of sets, whereas The Alliance and The Studios interpret the said "contracts, decisions, findings, and awards in arbitration" as granting jurisdiction to The Alliance over the erection of sets, and it is the latter interpretation which has been put into effect and has been in operation for more than two years last past.

That a controversy between two competing labor unions based upon an alleged violation of one of the unions' right of collective bargaining secured by Section 7 of the National Labor Relations Act, being Section 157, Title 29, U. S. C. A., does not "arise under the * * * laws of the United States" is clearly set forth in an opinion by the Circuit Court of Appeals, Second Circuit, in *United Electrical etc. Workers v. I. B. of E. Workers,* 115 F. (2d) 488.

Another statute of the United States upon which petitioners rely is Section 41(8), Title 28, U. S. C. A., which vests jurisdiction in District Courts of the United States in suits "arising under any law regulating commerce." The controversy shown by the amended complaint does not arise out of any law *regulating* interstate commerce; the fact that a controversy may *affect* interstate commerce does not give the District Courts of the United States jurisdiction thereof.

III.

Jurisdiction Was Not Conferred Upon the District Court Either by the Fifth or the Fourteenth Amendments to the Federal Constitution nor by the Civil Rights Statutes Enacted Pursuant to the Fourteenth Amendment, for Those Amendments Are Applicable Solely to Federal and State Action, Respectively.

A. The Fifth Amendment to the Federal Constitution Is Applicable Solely to Federal Action.

Petitioners first contend that the complaint herein alleges facts constituting a violation of the Fifth Amendment to the Federal Constitution. With respect to that Amendment, however, it has long been settled that it is a limitation only upon the Federal government and does not limit individual action. In the language of *Corrigan v. Buckley,* 271 U. S. 323, 330, 70 L. Ed. 969, 972:

> "The Fifth Amendment 'is a limitation only upon the powers of the general government,' *Talton v. Mayes,* 163 U. S. 376, 382, 41 L. Ed. 196, 198, 16 Sup. Ct. Rep. 986, and is not directed against the action of individuals."

B. The Fourteenth Amendment to the Federal Constitution Likewise Applies Solely to State Action.

The Fourteenth Amendment to the Federal Constitution is also relied upon by petitioners. It was early settled in *The Civil Rights Cases,* 109 U. S. 3, 27 L. Ed. 836, however, that the Fourteenth Amendment did not

apply to individual action, but applied solely to State action. In the language of this Court in that decision,

> "It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the Amendment . . ."

Similarly, in *Virginia v. Rives,* 100 U. S. 313, 25 L. Ed. 667, in referring to Section 1 of the Fourteenth Amendment the court stated at page 318 (25 L. Ed. at page 669), that

> "The provisions of the 14th Amendment of the Constitution we have quoted all have reference to state action exclusively, and not to any action of private individuals."

See, also:

> *United States v. Harris,* 106 U. S. 629, 639, 27 L. Ed. 290, 294.

The complaint here under consideration, does not in any manner suggest the presence of State action.

C. The Civil Rights Statutes Enacted After the Civil War to Enforce the Provisions of the Fourteenth Amendment Apply to State Action Solely, or to Action Done Under Color of State Law.

(1) SECTION 43 OF TITLE 8. U. S. C. A. BY EXPRESS PROVISION IS LIMITED TO ACTION UNDER COLOR OF STATE LAW.

In Paragraph VIII of their complaint, petitioners allege that, "jurisdiction of this Court is vested by virtue of . . . Section 43 . . . Title 8, United States Codes Annotated." That provision is as follows:

> "*Civil action for deprivation of rights.* Every person who, *under color of any statute, ordinance, regula-*

tion, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress: R. S. 1979."

There is no intimation in the amended complaint, however, that respondents or any of them acted under color of state law. In the language of *California Oil & Gas Co. v. Miller,* 96 Fed. 12, 22:

> "The liability declared in said section 1979, 8 U. S. C. A. 43 for depriving a person of rights, privileges, or immunities secured by the constitution and laws of the United States manifestly depends upon the fact that such deprivation be under color of some statute, ordinance, etc., of a state or territory; and therefore, to constitute a cause of action under said section, the plaintiff must show, as part of his case, that the defendant claims to act under color of a statute, ordinance, etc., of a state or territory."

(2) Section 47(3) of Title 8, United States Code Annotated, Likewise Applies Only to State Action, as Contrasted to Individual Action.

Petitioners contend further that jurisdiction was vested in the lower court by virtue of Section 47(3), Title 8, United States Code Annotated, and Section 41(12), Title 28, U. S. C. A.

Section 41(12), Title 28, gives jurisdiction to the Federal District Courts:

> "Of all suits authorized by law to be brought by any person for the recovery of damages on account

of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in Section 47 of Title 8."

The foregoing statutes have been construed, as was the Fourteenth Amendment, to provide for redress against State action and not against the invasion of private rights by individuals. These principles and the authorities establishing them are summarized in *Love v. Chandler* (C.C.A. 8), 124 F. (2d) 785 at 786-787, from which we quote as follows:

"The appellant contends that his complaint states a claim under Sec. 47(2) and (3) of Title 8, U. S. C. A., authorizing actions for damages for conspiracies to deprive citizens of the equal protection of the laws or from exercising any right or privilege as a citizen of the United States, and that it also states a claim under Sec. 48 of Title 8, U. S. C. A., which authorizes the recovery of damages from any person who, having knowledge of such a conspiracy and the power to prevent it, neglects or refuses so to do. The appellant further contends that the trial court had jurisdiction of the subject matter of this action by virtue of Sec. 41(12), (13) and (14) of Title 28, U. S. C. A., which confer upon the District Courts of the United States jurisdiction of actions to recover damages for deprivation of rights in furtherance of such conspiracies as are described in Sec. 47 of Title 8, U. S. C. A.

"The trial court was of the opinion that, since this Court had held in *Love v. United States,* 108 F. (2d) 43, 49, that the right of the appellant to be employed by the Works Progress Administration was not an absolute right conferred by the Constitution or laws of the United States and that the Dis-

trict Court was without jurisdiction to review the administrative action of which the appellant had complained in that case, the complaint in the instant action, under the rule announced in *Mitchell v. Greenough,* 9 Cir., 100 F. (2d) 184, certiorari denied 306 U. S. 659, 59 S. Ct. 788, 83 L. Ed. 1056, did not state a claim for damages resulting from a conspiracy to deprive the appellant of any right or privilege dependent upon a law of the United States.

"The statutes which the appellant seeks to invoke were passed shortly after the Civil War to aid in the enforcement of the Thirteenth Amendment prohibiting State action the effect of which would be to abridge the privileges or immunities of citizens of the United States or to deprive any person of life, liberty or property without due process or to deny any person the equal protection of the law, and the Fifteenth Amendment prohibiting the denial of the right to vote on account of race or color. [Citing cases.] The statutes were intended to provide for redress against State action and primarily that which discriminated against individuals within the jurisdiction of the United States. [Citing cases.] The statutes, while they granted protection to persons from conspiracies to deprive them of the rights secured by the Constitution and laws of the United States (*United States v. Mosley,* 238 U. S. 383, 387, 388, 35 S. Ct. 904, 59 L. Ed. 1355), *did not have the effect of taking into federal control the protection of private rights against invasion by individuals.* [Citing cases.] The protection of such rights and redress for such wrongs was left with the States. [Citing cases.]

"The appellant does not seek redress because the State of Minnesota is discriminating against him, or because its laws fail to afford him equal protection.

> We have already held that *he had no absolute* right under the laws of the United States to have or retain employment by the Works Progress Administration. The appellant seeks damages because certain persons, as individuals, have allegedly conspired to injure him and have injured him by individual and concerted action. The wrongs allegedly suffered by the appellant are assault and battery, false imprisonment, *and interference with his efforts to obtain and retain employment with the Works Progress Administration.* The protection of the rights allegedly infringed and redress for the alleged wrongs are, we think within the exclusive province of the State. [Citing cases.] We agree with the trial court that the appellant has failed to state a claim upon which relief could be granted under the statutes which he has invoked. His complaint was properly dismissed."

Similarly, in *Simpson v. Geary,* 204 Fed. 507, the plaintiffs contended that they were deprived of their right to work as brakemen and flagmen by reason of an Arizona law. In holding that no Federal jurisdiction could be invoked on the facts alleged in the complaint, the Court stated as follows:

> *"The right to contract for and retain employment in a given occupation or calling is not a right secured by the Constitution of the United States, nor by any Constitution. It is primarily a natural right, and it is only when a state law regulating such employment discriminates arbitrarily against the equal right of some class of citizens of the United States, or some class of persons within its jurisdiction, as, for example, on account of race or color, that the civil rights of such persons are invaded, and the protection of the federal Constitution can be invoked to protect the individual in his employment or calling."*

In *Mitchell v. Greenough* (C. C. A. 9), 100 F. (2d) 184, 187, that Court, in construing 8 U. S. C. A. 47, stated as follows:

> "The prohibition against 'denial of the equal protection of the law' was to prevent class legislation or action."

In the present case, as previously noted, no allegation exists in the complaint and no factual situation exists of which the Court could take judicial notice that the defendants, or any of them are acting "under color of any statute, ordinance, regulation, custom or usage of any state."

A lengthy dissertation in accord with the *Chandler* decision will be found in *Love v. United States,* 108 F. (2d) 43, 45-6, in which the Circuit Court of Appeals for the 8th Circuit said:

> "Certain disputes which have arisen on various occasions in the course of our history in respect to the tenure of 'offices' and the power to make removals of incumbents or to replace them with other appointees, have called forth the utmost effort of the courts to find peaceful solution in law and reason. Several such controversies were recognized to be of far-reaching importance. They were justiciable and were settled upon profound consideration by judicial determination.
>
> *"But such determination has always been rested upon the interpretation and application of the provisions of the constitution and federal enactments. It can not be predicated upon any judicial concept concerning an able-bodied, competent and willing man's natural or inherent right to work. Unless a legal right has been defined and conferred by legislative*

authority, no justiciable controversy is present. The principles applicable are the same in the field of government work as in the broader field of private enterprise. The right to work at a particular employment must be shown to have become vested by law in the person asserting it. [citing cases.]"

A case involving the question of the right to practice law and whether it is protected by the Constitution or statutes of the United States is *Brents v. Stone, et al.,* 60 Fed. Supp. 82, from which we quote as follows on page 84:

> "Nor can the action be sustained as one to secure protection of civil rights under the Federal Constitution, for a license to practice law is not a privilege within the purview of any constitutional provision. Mitchell v. Greenough, 9 Cir., 100 F. 2d 184, rehearing denied 9 Cir., 100 F. 2d 1006; certiorari denied 306 U. S. 659, 59 S. Ct. 788, 83 L. Ed. 1056; Bradwell v. Illinois, 16 Wall. 130, 83 U. S. 130, 21 L. Ed. 442; In re Lockwood, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929."

To the same effect is *Emmons v. Smitt, et al.,* 58 Fed. Supp. 869.

Other decisions which hold adversely to the contention of petitioners that the District Court below had jurisdiction either under the Fifth or the Fourteenth Amendments to the Federal Constitution or under the Civil Rights Statutes are *Haywood v. United States,* 268 Fed. 795, in which the Circuit Court of Appeals for the Seventh Circuit said at pages 800-801, "to produce, to sell, to contract to sell to any buyer, are not rights or privileges conferred by the Constitution and laws of the United States," *United States v. Moore,* 129 Fed. 630, in which it was held that

the right of a citizen to organize persons in any pursuit was a fundamental right in all free governments, but was not a right, privilege, or immunity granted or secured to citizens of the United States by its Constitution or laws, and is left solely to the protection of the states, and *United States v. Berke Cake Co.,* 50 Fed. Supp. 311. It is true that in these actions the Courts interpreted Section 51, Title 18, U. S. C. A., and not Section 47(3) of Title 8, U. S. C. A., the latter and not the former being pleaded by petitioners as vesting jurisdiction in the District Court below. Nevertheless, the language of these two sections is almost identical and decisions under the former may properly be considered as shedding light on the interpretation which should be given the latter.

That the right to follow any of the common occupations of life and to pursue any calling, business or profession one may choose is a property right to be guarded by the proper Courts as zealously as any other form of property, that labor is property and that the laborer has the same right to sell his labor and to contract with reference thereto as any other property owner, cannot be questioned. Such rights are natural, fundamental, inalienable rights; they exist in all free governments. They are not "rights" dependent upon, secured, arising out of, nor protected by the Constitution of the United States nor any statutes or laws of the United States. When the thirteen colonies became a nation and when new states were admitted to the Union, they did not deliver into the hands of the Federal Government the protection of such pre-existing rights.

IV.

The Federal Declaratory Judgment Act Did Not Add to the Jurisdiction of the District Courts, but Merely Provided an Additional Remedy Within the Framework of the Previously Existing Jurisdiction.

Petitioners contend that the District Court had jurisdiction by virtue of the provisions of the Federal Declaratory Judgment Act (Section 400, Title 98, U. S. C. A.). It is settled, however, that such Act added nothing to the jurisdiction of the District Courts and that diversity of citizenship or some other previously established basis for federal jurisdiction must exist even though the provisions of the Federal Declaratory Judgment Act are otherwise applicable.

In the language of *Aetna Casualty & Surety Co. v. Quarles,* 92 F. (2d) 321, 323-4, "The Federal Declaratory Judgment Act (Jud. Code, Sec. 274d, 23 U. S. C. A. Sec. 400) is not one which adds to the jurisdiction of the court, but is a procedural statute which provides an additional remedy for use in those cases and controversies of which the federal courts already have jurisdiction."

The authorities holding that the Federal Declaratory Judgment Act did not confer additional jurisdiction on the federal courts are so numerous and uniform that the citation thereof would be supererogation.

V.

The Labor-Management Relations Act of 1947, Effective Approximately Five Months After the Dismissal Below, Has No Bearing on This Action.

Finally, petitioners put forth the contention that jurisdiction in the District Court was vested by virtue of the provisions of the Labor-Management Relations Act of 1947. The original complaint herein was filed on December 7, 1946. The amended complaint was filed January 3, 1947 [R. 67]. The Labor-Management Relations Act, however, did not become effective until June 23, 1947, although judgment of dismissal below had been rendered on February 25, 1947 [R. 128]. Accordingly, the Labor-Management Relations Act of 1947 could not possibly vest jurisdiction in the District Court unless it were given a retroactive effect. It is settled, however, that unless a statute is by its terms specifically given retroactive effect, its effect will solely be prospective.

> *Shwab v. Doyle,* 66 L. Ed. 747, 258 U. S. 529, 42 S. Ct. 391.

In the language of *Neild v. District of Columbia,* 110 F. (2d) 246, 254:

> "The rule is well settled that unless the contrary plainly appears a statute operates prospectively only (*Cox v. Hart,* 260 U. S. 427, 434, 43 S. Ct. 154, 67 L. Ed. 332; *Big Diamond Mills Co. v. United States,* 8 Cir., 51 F. 2d 721, 726). See generally, Smead, The Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence, 20 Minn. L. Rev. 775, 778 *et seq.*); in other words, 'that a statute ought not to be construed to operate retrospectively in the absence of clear, strong, and imperative language commanding it' (*Home Indemnity Co. v. Missouri,* 8 Cir., 78 F. 2d 391, 394. See also, *United States v. Heth,* 3 Cranch,

U. S., 399, 413, 2 L. Ed. 479; *Union Pacific Co. v. Laramie Stock Yards Co.,* 231 U. S. 190, 34 S. Ct. 101, 58 L. Ed. 179; *Jones v. Fidelity & Columbia Trust Co.,* 6 Cir., 73 F. 2d 446); and if a double sense is possible that which rejects retroactive operation must be selected. (*Shwab v. Doyle,* 258 U. S. 529, 535, 42 S. Ct. 391, 66 L. Ed. 747, 26 A. L. R. 1454.)"

It is not open to dispute that Section 301(a) of the Labor-Management Relations Act of 1947 creates liabilities that did not previously exist, and that, accordingly, under uniform authority, that Section cannot be given retroactive effect. Furthermore, we submit this Act does not give District Courts jurisdiction in actions brought by individual members of a labor organization but grants jurisdiction to such Courts only in actions between labor organization or between an employer and a labor organization.

Conclusion.

Respondents, The International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada and Roy M. Brewer, respectfully pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1947

No. 714.

OSCAR SCHATTE, *et al.*,

Petitioners,

vs.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

Respondents.

Brief of Respondents Association of Motion Picture Producers, Inc., Loew's Incorporated, Paramount Pictures Inc., Warner Bros. Pictures, Inc., Columbia Pictures Corporation, Samuel Goldwyn Productions, Inc., Republic Productions, Inc., Hal E. Roach Studio, Inc., Technicolor Motion Picture Corporation, Twentieth Century Fox Film Corporation, R.K.O. Radio Pictures, Inc., and Universal Pictures Company, Inc., in Opposition to Petition for Writ of Certiorari.

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IN THE

Supreme Court of the United States

October Term, 1947

No. 714.

OSCAR SCHATTE, *et al.*,

Petitioners,

vs.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

Respondents.

Brief of Respondents Association of Motion Picture Producers, Inc., Loew's Incorporated, Paramount Pictures Inc., Warner Bros. Pictures, Inc., Columbia Pictures Corporation, Samuel Goldwyn Productions, Inc., Republic Productions, Inc., Hal E. Roach Studio, Inc., Technicolor Motion Picture Corporation, Twentieth Century Fox Film Corporation, R.K.O. Radio Pictures, Inc., and Universal Pictures Company, Inc., in Opposition to Petition for Writ of Certiorari.

Statement of the Case.

This is an action for declaratory relief with respect to the interpretation of collective bargaining agreements alleged to have been made between respondent Motion Picture Companies, respondent IATSE, and Local 946 of

the Carpenters Union. In their complaint, petitioners allege that they are members of the Carpenters Union; that the collective bargaining agreements require the Companies to assign the work of "erection of sets on stages" to members of the IATSE and other "carpenter work" to members of the Carpenters Union; that the Companies interpreted the words "erection of sets on stages" as meaning "construction of sets on stages," whereas, according to plaintiffs, the correct interpretation was "assemblage of sets on stages"; that the Companies have assigned set construction to members of the IATSE, a rival A. F. of L. Union, in violation of these agreements. [R. 3-22.]

The District Court correctly described the action as one "in which private individuals asked this Court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other." [R. 122-123.]

The action was commenced (January 3, 1947) and dismissed for want of jurisdiction (February 25, 1947) before the enactment of the Labor-Management Relations Act of 1947 (June 23, 1947; 29 U. S. C. A. 141). The question is whether the Circuit Court of Appeals erred in affirming the judgment of the District Court holding that in the absence of an allegation of diversity of citizenship, it had no jurisdiction over an action brought by individual members of the Union for the purpose of interpreting collective bargaining agreements.

I.

Answer to Petitioners' Point I: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the Fifth Amendment.

Plaintiffs contend that they have been deprived of property without due process of law because the defendant Motion Picture Companies hired members of the IATSE rather than members of the Carpenters Union to erect sets on stages. Even if defendant Motion Picture Companies were wrong in construing their collective bargaining contracts with the IATSE and the Carpenters Union as requiring the Companies to employ members of the IATSE to erect sets on stages, still, such action on their part would not have constituted a violation of the Fifth Amendment.

The Fifth Amendment prohibits acts of the federal government, not individual action.[1] If petitioner's theory were to be accepted, every violation of an employment contract would be a violation of the Fifth Amendment, and the District Courts would have jurisdiction over all controversies arising out of the breach of such contracts. The application of the same principle would make every breach of a contract involving property a violation of the Fifth Amendment and would bring all such controversies within the jurisdiction of the District Courts.

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[1]*Corrigan v. Buckley*, 271 U. S. 323, 330; *Talton v. Mayes*, 163 U. S. 376, 382.

No allegation is made that the Companies based their construction of the contracts upon any federal statute. The Companies are not alleged to have acted under color of any federal statute. As private parties, the Companies acted in accordance with their interpretation of private contracts. Petitioner's contention that the complaint states a claim for violation of the Fifth Amendment is without merit.

II.

Answer to Petitioners' Point II: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the National Labor Relations Act.

The complaint does not set forth any facts even purporting to show a violation of any of the provisions of the National Labor Relations Act. Petitioners claim that defendant Motion Picture Companies have violated their collective bargaining agreements with the Carpenters Union. Violation of collective bargaining agreements is not prohibited by the National Labor Relations Act. The Act does not even require that employers or unions enter into collective bargaining contracts, much less that they perform them when made.[2] Even if the acts of the Motion Picture Companies which are claimed to be violative of the collective bargaining agreements were also violative of rights of the Petitioners which were protected by the National Labor Relations Act, still, the District Court would not have had jurisdiction to declare that the Act

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[2]*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45; *Lund v. Woodenware Workers Union* (D. C. Minn.), 19 F. Supp. 607, 609.

had been violated. Under Section 10(a) of the Act as it existed at the time this action was dismissed by the District Court, the National Labor Relations Board had exclusive jurisdiction over unfair labor practices.[3] The District Court was without jurisdiction.[4]

The fact that the collective bargaining agreements which petitioners seek to have construed were executed as a result of negotiations required by the National Labor Relations Act does not make this a case arising under said Act.[5] The Railway Labor Act,[6] in much the same language as is used in the National Labor Relations Act, requires collective bargaining, but the courts hold that actions to construe contracts made pursuant to such requirements are not within the jurisdiction of the District Court.[7]

Jurisdiction to determine whether the National Labor Relations Act has been violated lies not with the District Court, but with the National Labor Relations Board, subject to the right of the Circuit Courts of Appeals to review the Board's orders.

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[3]29 U. S. C. A. 160.

[4]*Myers v. Bethlehem Corporation,* 303 U. S. 41, 48; *Lund v. Woodenware Workers Union* (D. C. Minn.), 19 Fed. Supp. 607, 610.

[5]*Lund v. Woodenware Workers Union* (D. C. Minn.), 19 Fed. Supp. 607, 609; *Blankenship v. Kurfman* (C. C. A. 7, 1938), 96 F. (2d) 450; *Amalgamated Meat Cutters v. Spreckels* (C. C. A. 9, 1941), 119 F. (2d) 64, 65.

[6]45 U. S. C. A. 152.

[7]*Malone v. Gardner* (C. C. A. 4), 62 F. (2d) 15; *Delaware L. & W. R. Co. v. Slocum* (D. C.. N. Y,), 56 Fed. Supp. 634, 636.

III.

Answer to Petitioners' Point III: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under Judicial Code Section 24.

Judicial Code Section 24 consists of 28 subdivisions, each of which describes a type or types of cases over which the District Courts have jurisdiction. In arguing Point III, Petitioners fail to specify which subdivision is claimed to embrace this case. Petitioners simply describe an Arbitration Award which they seek to have the District Court construe. In the absence of an allegation of diversity of citizenship, we are unable to find any provision of Judicial Code Section 24 which could possibly constitute a basis for District Court jurisdiction to construe an Arbitration Award which private parties have agreed to abide by.

IV.

Answer to Petitioners' Point IV: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the Labor Management Relations Act of 1947.

Petitioners contend that jurisdiction is conferred by Section 301(a) of the Labor-Management Relations Act of 1947. The District Court dismissed this action before said section was enacted. Said section provides that certain actions *"may be brought* in any District Court of the United States having jurisdiction of the parties." Said section, therefore, operates *in futuro,* and not retroactively. It applies only to actions brought after June 23, 1947, when the Labor-Management Relations Act was enacted. Other statutes using the words *"may be brought"* have been held to operate *in futuro* and not retroactively.[8] Statutes conferring jurisdiction are not effective as to actions which have been dismissed by the trial court, even though the statute is enacted during the pendency of an appeal.[9]

Even though Section 301(a) of the Labor-Management Relations Act were held to breathe life into actions which had already been dismissed by the trial court for want of jurisdiction, still, said section would not have conferred jurisdiction upon the District Court in this action. Said section, properly construed, confers jurisdiction upon federal courts only in actions between a labor organization

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[8]*Newell v. Baltimore & Ohio R. Co.,* 181 Fed. 698, 700-701; *Ft. Smith & W. R. Co. v. Blevins* (Okla., 1913), 130 Pac. 625; *Baines v. Jamison* (Texas, 1893), 23 S. W. 639; *Texas Railway Co. v. Edmisson* (Texas, 1899), 52 S. W. 635; *Austin v. Parsons* (Texas, 1928), 3 S. W. (2d) 555.

[9]*Grant v. Greene Cons. Copper Co.* (App. Div.), 154 N. Y. S. 596, 600, aff'd 119 N. E. 1046.

and an employer. This action is not one between a labor organization and an employer. In this action, the eleven plaintiffs are alleged to be members of a labor organization, but there is no allegation that said members are or ever have been employees of respondent Motion Picture Companies. Thus, the action is not one between a labor organization and an employer, but is one between respondent Motion Picture Companies and members of the Carpenters Union who, so far as the allegations show, were never employed by any of respondent Motion Picture Companies.

The Congressional Committee Reports and Reports of Senate and House Conferees make it clear that the jurisdiction which Congress intended to confer upon District Courts was not jurisdiction over actions between individuals and persons or companies that might employ employees, but rather that jurisdiction should be conferred upon District Courts in actions between labor organizations and employers with respect to contracts between such labor organizations and such employers. They refer to Section 301(a) as conferring jurisdiction over "suits by unions as legal entities and against unions as legal entities;" suits "between a labor organization and an employer;" "suits by and against labor organizations."[10] It is plain that Congress never intended to make the District Courts a forum in which *individual* employees and employers could sue each other for violation of collective bargaining contracts, regardless of the amount involved or the lack of diversity of citizenship.

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[10]Report No. 105 of Senate Committee on Labor and Public Welfare, dated April 17, 1947; Report of Senate Conferees, dated June 5, 1947, Congressional Record, page 6602; Report of House Conferees, dated June 3, 1947, Congressional Record, pages 64-70.

V.

Answer to Petitioners' Point V: The Federal Declaratory Judgment Act Is Applicable Only to Cases Within the Jurisdiction of the Federal Court; It Does Not Confer Jurisdiction Where None Otherwise Exists.

The Federal Declaratory Judgment Act does not enable petitioners to bring this action in the District Court when jurisdiction does not otherwise exist. The Federal Declaratory Judgment Act is a procedural statute, applicable to cases within the jurisdiction of the federal courts, and not a statute conferring jurisdiction.[11]

Conclusion.

Respondent Motion Picture Companies pray that the Petition for Writ of Certiorari be dismissed.

Respectfully submitted,

HOMER I. MITCHELL,
Attorney for said Respondents.

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[11] *Aetna Casualty & Surety Co. v. Quarles* (C. C. A. 4), 92 F. (2d) 321, 323; *Mississippi Power & Light Co. v. City of Jackson* (C. C. A. 5), 116 F. (2d) 924; *Samuel Goldwyn, Inc. v. United Artists Corporation* (C. C. A. 3), 113 F. (2d) 703, 708; *McCarty v. Hollis* (C. C. A. 10), 120 F. (2d) 540, 542; *Homes Ins. Co. v. Trotter* (C. C. A. 8), 130 F. (2d) 800.